123-60

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 86.

BENJAMIN J. WILSON, APPELLANT,

vs.

WILLIAM C. RIDDLE, AS TRUSTEE FOR HIS WIFE SENY ANN S. RIDDLE AND CHILDREN, SENY ANN S. RIDDLE, WIFE OF WILLIAM C. RIDDLE, ANNIE E. MINAR, WIFE OF T. M. MINAR (FORMERLY ANNIE E. RIDDLE), ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED OCTOBER 11, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 86.

BENJAMIN J. WILSON, APPELLANT,

vs.

WILLIAM C. RIDDLE, AS TRUSTEE FOR HIS WIFE SENY ANN S. RIDDLE AND CHILDREN, SENY ANN S. RIDDLE, WIFE OF WILLIAM C. RIDDLE, ANNIE E. MINAR, WIFE OF T. M. MINAR (FORMERLY ANNIE E. RIDDLE), ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from state court	2	1
Petition	2	1
Summons	6	3
Affidavit of defendant	7	3
Petition and summons and return	10	4
Disclaimer and order to spread on minutes	15	6
Petition for Benj. J. Wilson to be made defendant, &c.	16	6
Petition for removal	18	7
Bond for removal	23	9
Order for removal	27	10
Clerk's certificate	29	11
Consent to open testimony	30	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 29, 1887.

	Original.	Print.
Order to withdraw answers of witnesses	31	12
Amendment to original declaration	32	13
Order to reform pleadings and to continue case	34	13
Motion for rehearing, &c.	35	14
Amended and reformed pleadings, &c.	36	15
Entry of appearance for defendant	42	18
Answer of defendant	43	19
Amendment to answer	48	21
Replication to answer	51	23
Application to take testimony by commissioner	52	24
Application to appoint commissioner to take testimony	56	25
Order allowing complainant to withdraw deed from file	58	27
Order appointing commissioner to take testimony	59	27
Trial of issues of fact	62	29
Exceptions *pendente lite*	63	30
Exceptions *pendente lite*	67	31
Final decree	72	34
Petition for and order allowing supersedeas	74	35
Appeal bond	78	37
Evidence for complainants	81	39
Testimony of Wm. C. Riddle	81	39
W. E. Clark	95	47
Simon S. Thomas	104	53
Wm. J. Henderson	118	58
Ira Walden	120	62
E. S. Langmade	120	64
Seny Ann S. Riddle	135	69
Green Riddle	143	74
Aiden M. Vining	151	78
John T. Youngblood	158	83
A. D. Jernigan	167	87
Ira Walden	170	89
Elephare Walden	175	92
Dr. D. L. Cheatham	177	93
A. Youngblood	179	94
M. H. Odom	180	95
Reuben Mayo	182	96
Henry H. Holmes	183	97
Irvin L. Adams	185	98
Wm. E. Clark	187	99
John N. Gilmore	188	99
Wm. C. Riddle	192	101
Charles D. Thigpen	200	106
Evidence for defendant:		
Testimony of Benj. J. Wilson	204	108
Thomas Spencer	226	120
Sylvanus Truluck	258	138
J. Ben Wilson	262	140
Clerk's certificate	266	141
Petition	267	142
Order	268	142
Notice as to time of taking testimony by A. E. Buck	269	143

	Original.	Print.
Evidence for defendant	270	143
Testimony of B. F. Moore	270	144
J. W. Goldsmith	280	149
E. S. McCandless	283	150
W. D. Luckie	285	151
H. M. Caker, Jr.	288	153
B. J. Wilson	291	154
B. J. Wilson	294	156
Letter of S. Truluck to B. J. Wilson	295	156
Clerk's certificate	296	157

	Original.	Print.
Order to withdraw answers of witnesses	31	12
Amendment to original declaration	32	13
Order to reform pleadings and to continue case	34	13
Motion for rehearing, &c.	35	14
Amended and reformed pleadings, &c.	36	15
Entry of appearance for defendant	42	18
Answer of defendant	43	19
Amendment to answer	48	21
Replication to answer	51	23
Application to take testimony by commissioner	52	24
Application to appoint commissioner to take testimony	56	25
Order allowing complainant to withdraw deed from file	58	27
Order appointing commissioner to take testimony	59	27
Trial of issues of fact	62	29
Exceptions *pendente lite*	63	30
Exceptions *pendente lite*	67	31
Final decree	72	34
Petition for and order allowing supersedeas	74	35
Appeal bond	78	37
Evidence for complainants	81	39
Testimony of Wm. C. Riddle	81	39
W. E. Clark	95	47
Simon S. Thomas	104	53
Wm. J. Henderson	118	58
Ira Walden	120	62
E. S. Langmade	120	64
Seny Ann S. Riddle	135	69
Green Riddle	143	74
Aiden M. Vining	151	78
John T. Youngblood	158	83
A. D. Jernigan	167	87
Ira Walden	170	89
Elephare Walden	175	92
Dr. D. L. Cheatham	177	93
A. Youngblood	179	94
M. H. Odom	180	95
Reuben Mayo	182	96
Henry H. Holmes	183	97
Irvin L. Adams	185	98
Wm. E. Clark	187	99
John N. Gilmore	188	99
Wm. C. Riddle	192	101
Charles D. Thigpen	200	106
Evidence for defendant:		
Testimony of Benj. J. Wilson	204	108
Thomas Spencer	226	120
Sylvanus Trutuck	258	138
J. Ben Wilson	262	140
Clerk's certificate	266	141
Petition	267	142
Order	268	142
Notice as to time of taking testimony by A. E. Buck	269	143

	Original.	Print.
Evidence for defendant	270	143
Testimony of B. F. Moore	270	144
J. W. Goldsmith	280	149
E. S. McCandless	283	150
W. D. Luckie	285	151
H. M. Caker, Jr.	288	153
B. J. Wilson	291	154
B. J. Wilson	294	156
Letter of S. Truluck to B. J. Wilson	295	156
Clerk's certificate	296	157

a UNITED STATES OF AMERICA, } ss:
Eastern Division, Southern District of Georgia, }

At a stated term of the circuit court of the United States of America for the eastern division of the southern district of Georgia, begun and holden at the United States circuit court rooms in the city of Savannah, in and for the said district, on Thursday, the eighth (8th) day of November, in the year of our Lord one thousand eight hundred and eighty-three (A. D. 1883)—present, the Honorable James W. Locke, judge for the southern district of Florida, presiding in said court under appointment during the disability of Honorable John Erskine, made by the circuit judge for the fifth judicial circuit of the United States in accordance with the statute in such case made and provided—the following proceedings, among others, were had, to wit:

1 *Amendment to the Ejectment Suit in the Nature of a Bill in Equity.*

WILLIAM C. RIDDLE, Trustee, *et al.*, Complainants,

and

BENJAMIN J. WILSON, Defendant.

Ejectment.

SENY ANN S. RIDDLE *et al.*, Plaintiffs,

versus

BENJAMIN J. WILSON *et al.*, Defendants.

Removed from Washington superior court.

Be it remembered that heretofore, to wit, on the eighth (8th) day of April, in the year of our Lord one thousand eight hundred and eighty-two (A. D. 1882), came the within-named defendant, by his attorneys-at-law, James K. Hines and Lanier & Anderson,
2 and filed in this court a transcript of the record of said case in the superior court of Washington county, Georgia; which said transcript from said superior court of Washington county, Georgia, is in the words and figures following, to wit:

Transcript of Record from Superior Court of Washington County, Georgia.

STATE OF GEORGIA, *Washington County:*

To the superior court of said county:

The petition of Senny Ann S. Riddle, wife of William C. Riddle, of said county; Annie E. Minar, wife of J. M. Minar, formerly Annie E. Riddle, daughter of W. C. and Senny Ann S. Riddle; Isabella U. Cheatham, wife of Dr. A. T. Cheatham, formerly Isabella U. Riddle, daughter of Wm. C. and Senny Ann S. Riddle; Louisa Newsome, wife of Joseph Newsome, formerly Louisa Riddle, daughter of Wm.

3 C. and Senny Ann S. Riddle; Mary Thomas, wife of Simon S. Thomas, formerly Mary Riddle, daughter of Wm. C. and Senny Ann S. Riddle; Julia Riddle, daughter of Wm. C. and Senny Ann S. Riddle; Anderson M. Riddle, John Riddle, and Wm. H. Riddle, sons of Wm. C. and Senny Ann S. Riddle; Lula Edwards, daughter of Martha Edwards, now deceased, who was the daughter of Wm. C. and Senny Ann S. Riddle; Sallie C. Gilyard, formerly Sallie C. Edwards, daughter of Martha Edwards, who was the daughter of Wm. C. and Senny Ann S. Riddle, showeth—

That J. Ben. Wilson, of said county, is in possession of a certain tract of land in said county, lying on the line of the Central railroad and on the waters of Williamson swamp, containing fifteen hundred acres, more or less, composed of two adjoining tracts known as the Brantly Mill place, containing one thousand acres, the other tract, known as Brown place, containing five hundred acres. Said two tracts, as now consolidated into one tract, make the fifteen hundred acres, which is bounded on the north by Ball's Ferry road and Sandersville and Louisville road, on the east by B. J. Wilson's Francis or Sheppard place and the lands of Wm. C. Riddle, trustee for his wife and children, south by B. J. Wilson's Snow Hill place, and west by lands of Henry Holmes, formerly lands of Hunt and Langmade; lands of B. J. Wilson and John L. Hardee, to

4 which your petitioners claim title; that the said J. Ben. Wilson has received the profits of said land since the first day of January, eighteen hundred and seventy-seven, of the yearly value of thirteen hundred dollars, and refuses to deliver said land to your petitioners or to pay them the profits thereof.

Your petitioners further show that in the year one thousand eight hundred and fifty-three the said Wm. C. Riddle, then being the owner of the above-described two tracts of land, to wit, the Brantley Mill place and the Brown place, by deed of trust conveyed said two tracts of land to himself as trustee for your petitioners, and that now, although the said defendant is in possession of said land, setting up a claim of title adverse to the title of said trustee and your petitioners, the said Wm. C. Riddle, in violation of his trust, refuses to bring suit for the recovery of said lands or to collect the rents and profits thereof.

Wherefore your petitioners bring suit and prays process may issue requiring the said J. Ben. Wilson to be and appear at the next superior court to be held in and for said county to answer your petitioners' complaint.

O. H. ROGERS AND
E. S. LANGMADE,
Pl'tiffs' Att'ys.

5 *Abstract of Title Relied on for Recovery.*

1st. A deed from Wm. C. Riddle to Wm. C. Riddle, as trustee for his wife, Senny Ann S. Riddle, and her children by him, the said Wm. C. Riddle, dated the 23d day of April, eighteen hundred and fifty-three.

2nd. Possession by the said Wm. C. Riddle, trustee as aforesaid under said deed, from the date of said deed up to the first day of January, eighteen hundred and seventy-seven.

Endorsements: No. 23. In the superior court of Washington county. September term, 1881. Senny Ann S. Riddle *et al. vs.* J. Ben. Wilson. Action of ejectment and for mesne profits. Original filed in office this Aug. 11th, 1881. A. M. Mayo, clerk. O. H. Rogers and E. S. Langmade, pl't'ffs' att'ys. Sheriff's service. Sun Hill, Aug. 11th, 1881. Personally served J. Ben. Wilson, the defendant, with a copy of the within petition and process. O. A. Roughten, sh'ff W. C.

6 *Action of Ejectment.*

STATE OF GEORGIA, *Washington County:*

In the Superior Court of said County.

SENNY ANN S. RIDDLE *et al. vs.* J. BEN. WILSON.

Complaint.

To the sheriff of said county, Greeting:

The defendant, J. Ben. Wilson, is hereby required, in person or by attorney, to be and appear at the superior court next to be holden in and for the county aforesaid on the first Monday in September next, then and there to answer the plaintiff in an action of ejectment and for mesne profits, as in default of such appearance said court will proceed thereon as to justice may appertain.

Witness the Honorable Reuben W. Carswell, judge of said court, this 11th day of August, eighteen hundred and eighty-one.

A. M. MAYO,
Clerk Sup'r C't, W. Co.

7 *Ejectment.*

GEORGIA, *Washington County:*

In the Superior Court of said County. September Term, 1881.

SENNY ANN S. RIDDLE *et al. vs.* J. BEN. WILSON.

In person appeared before the undersigned J. Ben. Wilson, the defendant in the above-stated case, who, being duly sworn, deposes and says that the deed from Wm. C. Riddle to Wm. C. Riddle, trustee for his wife, Senny Ann S. Riddle, and her children by him, the said Wm. C. Riddle, dated the 23d day of April, 1853, on which plaintiffs rely for recovery in said case above stated, is not of record in the clerk's office of the superior court of said county, or if ever of record therein, the record thereof has been burned and destroyed; that deponent has never seen said deed, and only heard of said deed a short time before the commencement of said suit against him; that he knows not who the subscribing witnesses to said deed are, and has no means of ascertaining said fact save from an inspection of said

deed to see who said witnesses are; that said deed is a forgery to the best of deponent's knowledge and belief; that deponent desires to have said deed or a certified copy thereof to show to the subscribing witnesses to ascertain whether said deed is a
8 forgery or not and in order to ascertain the truth and justice of plaintiffs' case, and deponent cannot prepare his defense in said case without an inspection of said deed; wherefore deponent makes this affidavit that an issue may be made and the genuineness of said alleged deed may be tried and determined, and that said original deed may be by plaintiffs filed in the clerk's office of the superior court of said county for inspection by deponent and his counsel, in order that deponent may inspect said deed and prepare to defend his said case and to show the forgery of said deed, if he can.

J. BEN. WILSON.

Sworn to and subscribed before me this 1st day of September term, 1881.

A. M. MAYO,
Clerk Superior C't, W. C.

9 Endorsements on the above: In the superior court of Washington county. September term, 1881. Senny Ann S. Riddle *et al. vs.* J. Ben. Wilson. Action of ejectment and for mesne profits. Affidavit denying genuineness of plaintiff's deed and for production of papers. Filed in office Sept. 16th, 1881. A. M. Mayo, clerk. H. K. McCay, James Hines, atty's for d'f't.

10 STATE OF GEORGIA, *Washington County:*

To the superior court of said county:

The petition of Senny Ann S. Riddle, wife of William C. Riddle, of said county; Annie E. Miner, wife of J. M. Miner, formerly Annie E. Riddle, daughter of Wm. C. Riddle and Senny Ann S. Riddle; Isabella U. Cheatham, wife of Dr. A. T. Cheatham, formerly Isabella U. Riddle, daughter of Wm. C. Riddle and Senny Ann S. Riddle; Louisa Newsome, wife of Joseph Newsome, formerly Louisa Riddle, daughter of William C. Riddle and Senny Ann S. Riddle; Mary Thomas, wife of Simon S. Thomas, formerly Mary Riddle, daughter of Wm. C. Riddle and Senny Ann S. Riddle; Julia Riddle, daughter of Wm. C. Riddle and Senny Ann S. Riddle; Anderson M. Riddle, John Riddle, and Wm. H. Riddle, sons of Wm. C. and Senny Ann S. Riddle; Lula Edwards, daughter of Martha Edwards, now deceased, who was the daughter of Wm. C. and Senny Ann S. Riddle; Sallie C. Gilyard, formerly Sallie C. Edwards, daughter of Martha Edwards, who was the daughter of Wm. C. and Senny Ann S. Riddle, showeth that J. Ben. Wilson, of said county, is in possession of a certain tract of land in said county, lying on the line of Central railroad and on the waters of Williamson swamp, containing fifteen hundred acres of land, more or less, composed of two adjoining tracts—one
11 of said tracts, known as the Brantley Mill place, containing one thousand acres; the other tract, known as Brown place,

containing five hundred acres. Said two tracts, as now consolidated into one tract, make the fifteen hundred acres, which is bounded on the north by Ball's Ferry road and Sandersville and Louisville road; on the east by R. J. Wilson's, Francis, or Sheppard places and the lands of William C. Riddle, trustee for wife and children; south by B. J. Wilson's Snow Hill place, and west by lands of Henry Holmes, formerly lands of Hunt and Langmade; lands of B. J. Wilson, and John L. Hardee, to which your petitioners claim title; that the said J. Ben. Wilson has received the profits of said lands since the first day of January, eighteen hundred and seventy-seven, of the yearly value of thirteen hundred dollars, and refused to deliver said land to your petitioners, or to pay them the profit thereof.

Your petitioners further show that in the year one thousand eight hundred and fifty-three the said William C. Riddle, then being the owner of the above-described two tracts of land, to wit, the Brantley Mill place & the Brown place, by deeds of trust conveyed said two tracts of land to himself as trustee for your petitioners, and that now, although the said defendant is in possession of said land,
12 setting up a claim of title adverse to the title of said trustee and your petitioners, the said Wm. C. Riddle, in violation of his trust, refuses to bring suit for the recovery of said land or to collect the rents and profits thereof.

Wherefore your petitioners bring suit and pray process may issue requiring the said J. Ben. Wilson to be and appear at the next superior court to be held in and for said county to answer your petitioner's complaint.

O. H. ROGERS,
E. S. LANGMADE,
Pl't'ffs' Att'ys.

Abstract of Title Relied on for Recovery.

1st. A deed from William C. Riddle to Wm. C. Riddle as trustee for his wife, Senny Ann S. Riddle, and her children by him, the said Wm. C. Riddle, dated 23d day of April, eighteen hundred and fifty-three.

2d. Possession by the said Wm. C. Riddle, trustee, as aforesaid, under said deed, from the date of said deed up to the first day of January, eighteen hundred and seventy-seven.

13 *Action of Ejectment.*

STATE OF GEORGIA, *Washington County:*

In the Superior Court of said County.

SENNY ANN S. RIDDLE *et al. vs.* J. BEN. WILSON.

To the sheriff of said county, Greeting:

The defendant, J. Ben. Wilson, is hereby required, in person or by attorney, to be and appear at the superior court next to be holden in and for the county aforesaid on the first Monday in September

next, then and there to answer the plaintiff in an action of ejectment and for mesne profits, as in default of such appearance said court will proceed thereon as to justice may appertain.

Witness the Honorable Reuben W. Carswell, judge of said court, this 11th day of August, eighteen hundred and eighty-one.

A. M. MAYO,
Clerk Sup'r C't, W. C.

14 Endorsements on the above: (Copy.) No. 23. In the superior court of Washington county. September term, 1881. Senny Ann S. Riddle *et al. vs.* J. Ben. Wilson. Action of ejectment and for mesne profits. Original filed in office this August 11th, 1881. A. M. Mayo, clerk. Sh'ff Fulton Co. Docket page 358. O. H. Rogers, E. S. Langmade, att'ys. Sheriff's service. Served B. J. Wilson personally with a copy of the within, as per instructions, this February 20th, 1882. A. M. Perkerson, sh'ff Fulton county, Ga. Filed in office this Feb. 21st, 1882. A. M. Mayo, clerk.

15 *Ejectment.*

SENNY ANN S. RIDDLE *et al. vs.* J. BEN. WILSON.

And now comes J. Ben. Wilson and disclaims all title to the land in dispute, and says that he has never received any of the rents or profits thereof.

J. BEN. WILSON,
By his attorney, JAMES K. HINES.

It is ordered by the court that the foregoing disclaimer of J. Ben. Wilson be spread upon the minutes of this court.

This 7th day of March, 1882.

R. W. CARSWELL,
Judge S. C't, W. C.

Endorsements on above: (Copy.) Washington Co. superior court. March term, 1882. Senny Ann S. Riddle *et al. vs.* J. Ben. Wilson. Ejectment. Renunciation by defendant of all title to the land in dispute & of all interest in said suit. James K. Hines, att'y for def't.

16 *Ejectment.*

SENNY ANN S. RIDDLE *et al. vs.* J. BEN. WILSON.

And now comes Benjamin J. Wilson, a resident of Fulton county, but a citizen of Great Britain, and shows that he desires himself made a party in the above suit. He claims to be the owner of the land in dispute and verily believes that he has the title thereto.

J. Ben. Wilson, said defendant, has no interest in said land nor has he ever received any of the rents or profits thereof.

Wherefore he prays to be the party defendant to said suit.

JAMES K. HINES,
Att'y for B. J. Wilson.

The foregoing petition read and considered, and it is ordered that Benjamin J. Wilson be, and he is hereby, made a party defendant to said case.

R. W. CARSWELL,
Judge S. C., W. C.

17 Endorsements on the above: (Copy.) Washington superior court. March term, 1882. Ejectment. Senny Ann S. Riddle *et al.* vs. J. B. Wilson. Order making Benj. J. Wilson party defendant. James K. Hines, att'y for movant.

18 *Ejectment.*

In Washington Superior Court. September Term, 1881.

SENNY ANN S. RIDDLE *et al.* *vs.* J. BEN. WILSON.

To the honorable the superior court of said county:

The petition of B. J. Wilson, of Atlanta, in the State of Georgia, shows that your petitioner is one of the defendants in this suit, and that the same was brought by Senny Ann S. Riddle, Annie E. Minar, Isabella W. Cheatham, Louisa Newsome, Mary Thomas, Julia Riddle, Anderson M. Riddle, John Riddle, Wm. H. Riddle, Lula Edwards, and Sallie C. Gilyard, plaintiffs, on the 11th day of August, 1881, in the superior court to be held in and for the county of Washington, in the middle judicial circuit of Georgia, against J. Ben. Wilson, son of your petitioner, as tenant in possession of the land hereinafter described.

Your petitioner shows further that on or about the 20th day of February, 1882, said plaintiffs in ejectment served or caused to be served upon your petitioner, as the true claimant of said land, a copy of the pending action aforesaid, in accordance with section 3360 of the code of said State.

And your petitioner further shows that the said plaintiffs have instituted their said suit for the recovery of a certain
19 tract of land lying in the county of Washington, State of Georgia, containing fifteen hundred acres, and bounded on the north by the Ball's Ferry road and Sandersville and Louisville road; on the east by B. J. Wilson's Francis place and the lands of William C. Riddle, trustee for wife and children; south by B. J. Wilson's Snow Hill place, and west by lands of Henry Holmes and lands of B. J. Wilson and John L. Hardee, and of the value of seven thousand dollars, and for the recovery of the mesne profits of said land since the 1st day of January, 1877, of the yearly value of thirteen hundred dollars, as claimed in said suit, and that the matter in dispute in this suit therefore exceeds the sum of five hundred dollars, exclusive of costs.

And your petitioner further shows that this suit is brought by said plaintiffs against said J. Ben. Wilson and your petitioner for the recovery of the land aforesaid and mesne profits as aforesaid, and that said plaintiffs are and were, at the time of the bringing of said

suit, citizens of the State of Georgia, and that your petitioner is and was, at the time of bringing this suit, an alien—that is to say, a subject of the Queen of Great Britain, and that there is in said suit a controversy between said plaintiffs and your petitioner concerning and touching the title to the land aforesaid and the
20 profits thereof; that your petitioner is the true claimant of said land and has the title thereto; that said J. Ben. Wilson was not even in possession thereof as your petitioner's tenant at the time of bringing said suit; that said J. Ben. Wilson disclaims all right and title to said land and has never received any of the rents and profits sued in this suit, but all rents and profits thereof since the 1st day of January, 1877, has been received by your petitioner, and that the said controversy can be fully determined as between said plaintiffs and your petitioner without the presence of the other defendant as a party to this cause.

And your petitioner further shows that this cause has not yet been tried, but the same is pending for trial, and that the term of said superior court of Washington county at which said cause could be first tried is the present March term of said court, appointed to be held on the first Monday in March, 1882, at Sandersville, Ga., and that your petitioner desires to remove this suit before the trial thereof into the next circuit court of the United States to be held in the southern district of Georgia, in the fifth circuit, in pursuance of the act of Congress, approved March 3d, 1875, entitled "An act to determine the jurisdiction of the circuit courts of the United
21 States and to regulate the removal of causes from State courts, and for other purposes."

And your petitioner shows that he is ready and willing to give bond, with good and sufficient surety, for his doing all acts and things required to be done by the said provisions of law upon the removal of a cause into the circuit court of the United States, and he offers and files herewith his bond executed by Mike Linch, of the city of Atlanta, as surety, in the penal sum of five hundred dollars, conditioned that your petitioner shall enter in the next circuit court of the United States to be held in the southern district of Georgia, on the first day of the session of said court, a copy of the record in this suit and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been wrongfully or improperly removed thereto, and shall do all such other appropriate acts as by the said "act of Congress approved March 3d, 1875," are required to be done upon the removal of a suit into the United States court as good and sufficient surety, according to the said provisions of law upon the removal of a suit into the United States court.

And your petitioner therefore prays that the said bond may
22 be accepted as good and sufficient surety according to the provisions of law and that the said suit may be removed into the next circuit court of the United States to be held in the southern district of Georgia, according to the terms of said act, and that no further proceedings may be had therein in this court.

And your petitioner will ever pray, &c.

B. J. WILSON, *Petitioner.*

JAMES K. HINES,
Attorney for Petitioner.

Endorsements on above: (Copy.) Washington superior court. March term, 1882. Ejectment. Senny Ann S. Riddle *et al. vs.* J. Ben. Wilson and B. J. Wilson. Petition to remove this suit to the circuit court of the United States. Filed in office this the 7th day of March, 1882. A. M. Mayo, clerk. James K. Hines, att'y for petitioner.

23 *Ejectment.*

In Washington Superior Court. September Term, 1881.

SENNY ANN S. RIDDLE *et al. vs.* J. BEN. WILSON *et al.*

We, B. J. Wilson, of Atlanta, in the State of Georgia, as principal, and Mike Lynch, of Atlanta, in the State of Georgia, as surety, are held and firmly bound unto Senny Ann S. Riddle, Annie E. Minor, Isabella U. Cheatham, Louisa Newsome, Mary Thomas, Julia Riddle, Anderson M. Riddle, John Riddle, Wm. H. Riddle, Lula Edwards, and Sallie C. Gilyard, plaintiffs in the above suit, of Washington Co., State of Georgia, in the sum of five hundred dollars, lawful money of the United States of America, to be paid them, their successors or assigns; for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the 4th day of March, 1882.

Whereas a suit was brought on the 11th day of August, 1881, in the superior court of Washington county, Georgia, by the said plaintiffs *vs.* the said J. Ben. Wilson, and afterwards, to wit, on the 20th day of February, 1882, served upon said B. J. Wilson, the real defendant and true claimant, and the same is now pending for trial in said court at Sandersville and is removable into the circuit court of the United States for the southern district of Georgia,
24 in the 5th circuit, under the act of Congress approved March 3d, 1875, entitled "An act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;" and whereas the said B. J. Wilson has filed his petition in said superior court for the removal of said suit into the next circuit court of the United States to be held in the southern district of Georgia:

Now, therefore, the condition of the above obligation is such that if the above-bounden B. J. Wilson or his legal representatives shall enter or cause to be entered in the circuit court of the United States for the southern district of Georgia, on the first day of its stated session next ensuing after the order of the said superior court for the removal of said suit into said circuit court, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been wrongfully or improperly removed thereto, and shall do or

shall cause to be done such other appropriate acts as by the said act of Congress are required to be done upon the removal of a suit into the United States court, then the above obligation to be void; otherwise to remain in full force and virtue.

25 B. J. WILSON. [L. S.]
MIKE LYNCH. [L. S.]

Attest: W. F. MOYERS,
N. P., F. Co., Ga.

STATE OF GEORGIA, }
County of Fulton, } *ss:*

Mike Lynch, the surety in the foregoing obligation named, being duly sworn, deposes & says that he is a resident of the State of Georgia and a householder therein and is worth the sum of five hundred dollars over all his just debts and liabilities and exclusive of property exempt by law from execution.

MIKE LYNCH.

Sworn to & subscribed before me this 4th day of March, 1882.
W. F. MOYERS,
Notary Public, F. Co., Ga.

STATE OF GEORGIA, }
County of Fulton, } *ss:*

I certify that on this the 4th day of March, 1882, personally before me appeared B. J. Wilson and Mike Lynch, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their own free act and deed for the uses and purposes therein mentioned.

W. F. MOYERS,
N. P., F. Co., Ga.

26 Endorsements on the above: Washington superior court. March term, 1882. Senny Ann S. Riddle *et al. vs.* J. Ben. Wilson *et al.* Ejectment. Bond to remove this suit to the circuit court of United States. Filed in office March 7th, 1882. A. M. Mayo, clerk. James K. Hines, att'y for petitioner.

27 *Ejectment.*

SENNY ANN S. RIDDLE *et al.*

vs.

J. BEN. WILSON & B. J. WILSON.

The defendant, B. J. Wilson, having complied with all the provisions of the act of March 3rd, 1875, entitled "An act to fix the jurisdiction of the circuit court of the United States and to regulate the removal of causes from State courts unto said courts, and for other purposes," it is ordered by the court that the petition and bond of said defendants be accepted; that said case be proceeded in

no further in this court, and that the same be removed into the next circuit court of the United States for the fifth circuit.

R. W. CARSWELL,
Judge S. C., W. C.

I, A. M. Mayo, clerk superior court of Washington county, State of Georgia, do hereby certify that the above and foregoing thirteen lines of written matter is a true and exact extract from the minutes of the superior court of said county and State, folio "201," Book "D," March 7th, 1882.

[SEAL.]

A. M. MAYO,
Clerk Sup'r C't, W. Co.

28 The foregoing written pages constitute one document, which is the transcript of the case removed from the superior court of Washington county, Georgia, to the circuit court of the United States for the southern district of Georgia, and thereon are the following endorsements, viz:

521. In the circuit court of the United States for the southern district of Georgia. April term, 1882. Senny Ann S. Riddle *et al. versus* J. Ben. Wilson and B. J. Wilson. Ejectment, &c. Removed case. Original transcript filed the 8th day of April, 1882. W. M. Heyward, d'p'ty clerk. J. K. Hines, d'f'ts' att'y.

29 CLERK'S OFFICE OF THE
SUPERIOR COURT OF WASHINGTON COUNTY, GEORGIA.

I, A. M. Mayo, clerk superior court Washington county, certify that the foregoing written matter contains a true and exact copy of the proceedings in the case of Senny Ann S. Riddle *et al. versus* J. Ben. Wilson *et al.* as appears of record in this office.

This March 29th, 1882.

[SEAL.]

A. M. MAYO,
Clerk Superior Court Washington Co., Georgia.

Endorsements on above: Senny Ann S. Riddle *et al. vs.* J. Ben. Wilson & B. J. Wilson. Action of ejectment and for mesne profits. Rec'd Ap'l 8, 1882. W. P. Ward, clerk.

30 *Telegram in Above Case.*

The Western Union Telegraph Company. Received at Savannah, Ga., April 13th, 1882. Dated Atlanta, Ga., April 13th, 1882.

To Hon. John Erskine:

Please pass case Riddle against Wilson; Judge McCay, counsel for Wilson, called to Baltimore to see sick brother.

(Signed) McCAY & ABBOTT.

Endorsement on telegram: Received April 13th, 1882. W. P. Ward, clerk.

Afterward, to wit, on the 16th day of November, 1882, came said plaintiffs and the said defendant, by their attorneys, and filed the following consent to open testimony in the words and figures following, to wit:

Consent to Open Testimony.

In the Fifth Circuit Court of the U. S. for Southern D'st. of Georgia.

SEENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Ejectment.

Counsel for defendant hereby consents for the opening of all interrogatories sued out in the above-stated case by both plaintiffs and defendant, counsel for plaintiffs hereby likewise agreeing.

13 Nov., 1882.

JAMES K. HINES,
Att'y for Defendant.
O. H. ROGERS,
Att'y for Plaintiffs.

Endorsements: No. 521. U. S. circuit court, eastern division, so. dist. Georgia. S. S. Riddle *vs.* J. B. Wilson *et al.* Consent to open testimony. Filed Nov. 16th, 1882. W. M. Heyward, dep. cl'k.

31

Afterward, to wit, at a stated term of the circuit court of the United States for the eastern division, southern district of Georgia, begun and holden in the United States court-rooms in the city of Savannah on the 9th day of November, 1882—present, the Hon. John Erskine, judge for the said district, presiding—the following order was made and entered of record in the words & figures following, to wit:

Order to Withdraw Answers of Witnesses.

In the Circuit Court of the U. S. for the Southern District of Ga.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

It appearing to the court that the answers of William C. Riddle, William T. Henderson, Simon S. Thomas, and W. E. Clark, witnesses examined on behalf of plaintiffs in above case, have not been properly certified by the commissioners and that the commissions are not duly executed, upon motion of George A. Mercer, of counsel for plaintiffs, it is ordered that the answers of said witnesses be withdrawn and that the interrogatories, answers, and commissions be returned to the commissioners for proper execution.

In open court Nov. 23d, 1882.

JOHN ERSKINE, *Judge.*

Endorsements: (No. 521.) U. S. circuit court, eastern division, so. dist. Georgia. Seny Ann S. Riddle *vs.* J. B. Wilson *et al.* Order to withdraw answers of witnesses, &c. Filed Nov. 23d, 1882. W. M. Heyward, dep. cl'k. Geo. A. Mercer, of counsel for pl't'fs.

32

Afterward, to wit, on the 2d day of December, A. D. 1882, at the said November, 1882, term of the said circuit court, came the said plaintiffs, by their attorneys of record, and filed an amendment to the original declaration in the words and figures following, to wit:

Amendment to Original Declaration.

In the Circuit Court of the United States for the Southern District of Georgia. November Term, 1882.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Ejectment.

Now, at this term of the court, comes the plaintiffs, by their attorneys, O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, and G. A. Mercer, and moves the court for leave to amend their declaration in the above-stated case by inserting after the words "The petition of," in the first line of the first page of said declaration, the words "William C. Riddle, trustee for his wife, Seny Ann S. Riddle, and her children, viz., Annie E. Minar, wife of James M. Minar, formerly Annie E. Riddle, daughter of Wm. C. & Seny Ann S. Riddle; Isabella Cheatham, wife of A. T. Cheatham, formerly Isabella Riddle, daughter of Wm. C. and Seny Ann S. Riddle; Louisa Newsom, wife of Joseph Newsom, formerly Louisa Riddle, daughter of Wm. C. and Seny Ann S. Riddle; Mary Thomas, wife of Simon S. Thomas,
33 formerly Mary Riddle, daughter of Wm. C. & Seny Ann S. Riddle; Anderson M. Riddle, John P. Riddle, and Wm. H. Riddle, sons of Wm. C. and Seny Ann S. Riddle; Lula Edwards and Sallie Gilyard, daughters of Martha Edwards, deceased, who was the daughter of the said Wm. C. & Seny Ann S. Riddle, the husband of said Martha Edwards having died prior to her death."

And plaintiffs move to amend their said declaration further by adding after the word "Riddle," in the twelfth line from the bottom on page first of said declaration, the words following, to wit:

James M. Minar, husband of Annie E. Minar, formerly Annie E. Riddle, daughter of Wm. C. and Seny Ann S. Riddle; A. T. Cheatham, husband of Isabella Cheatham, formerly Isabella Riddle, daughter of Wm. C. & Seny Ann S. Riddle; N. Joseph Newsom, husband of Louisa Newsom, formerly Louisa Riddle, daughter of Wm. C. & Seny Ann S. Riddle, and Simon S. Thomas, husband of Mary Thomas, formerly Mary Riddle, daughter of Wm. C. & Seny Ann S. Riddle; and that all said parties herein named may be made parties plaintiff in said case.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TWIGGS,
GEO. A. MERCER,
Att'ys for Plaintiffs.

STATE OF GEORGIA, *Washington County:*

In person comes O. H. Rogers, who, being duly sworn, says that he has this day served James K. Hines, att'y for B. J. Wilson,
34 personally, with a copy of the within amendment.

O. H. ROGERS.

Sworn to and subscribed before me this Nov. 15th, 1882.

A. M. MAYO,
Clerk S. C. W. C.

Endorsements: In the 5th circuit court of the U. S. for the southern dist. of Georgia. Nov'r term, 1882. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment. Amendment to original declaration. Filed Dec. 2d, 1882. W. P. Ward, clerk. Rogers, Langmade, Twiggs, & Mercer, pl't'fs' att'ys.

Afterward, to wit, on the 2d day of December, 1882, at a stated term of the circuit court of the United States for the eastern division, southern district of Georgia, began and holden in the U. S. court-rooms in the city of Savannah on the 9th day of November, A. D. 1882—present, the Hon. Don A. Pardee, circuit judge for the fifth judicial circuit, presiding—the following order was made and entered of record in the words and figures following, to wit:

Order to Reform Pleadings and to Continue Case.

In the Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

It is considered and ordered by the court that the said case stand continued for the term; that the cause be placed on the equity docket and appearances entered for solicitors on each side; that plaintiffs reform their pleadings so as to present their cause of action in an equitable shape by rule day in January, 1883, and that upon failure so to reform said case stand dismissed, unless a further extension of time be allowed.

In open court, Dec. 2d, 1882.

DON A. PARDEE,
Cir. Judge.

Endorsements: (521.) U. S. circuit court, so. dist., E. div. Georgia. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Order to reform pleadings & continue case. Filed Dec. 2d, 1882. W. P. Ward, clerk.

Afterwards, to wit, on the 7th day of December, A. D. 1882, at the said November, 1882, term of the said circuit court, came the said plaintiffs, by their attorneys of record, and filed a motion for rehearing, &c., in the words and figures following, to wit:

Motion for Rehearing, &c.

In the Circuit Court of the U. S. for the Southern District of Ga. November Term, 1882.

WM. C. RIDDLE, Trustee, *et al. vs.* B. J. WILSON.

Ejectment.

The said plaintiffs, by their attorneys, on this 7th day of December, 1882, during the continuance of the said the November term,

1882, of said court, move the court to grant them a rehearing upon the status of the pleadings in said case, and to annul and set aside, as improvidently granted, so much of the order passed by said court on the 2nd day of December, 1882, during said term, as directs
36 said case to be put upon the equity docket of said court, and said plaintiffs to reform this declaration so as to present their said action in an equitable shape.

H. D. D. TWIGGS,
GEO. A. MERCER,
E. S. LANGMEDE,
O. H. ROGERS,
Pl'ffs' Att'ys.

Endorsements: (521). In the U. S. circuit c't for the so. dist. of Ga. Nov. term, 1882. Ejectment. Wm. C. Riddle, trustee, *et al.* *vs.* B. J. Wilson. Motion for rehearing & to set aside order of Dec. 2nd, 1882. Filed Dec. 7th, 1882. W. M. Heyward, dep. clerk. H. D. D. Twiggs, Geo. A. Mercer, *et al.*, pl't'f's' att'ys.

Afterward, to wit, on the 26th day of December, A. D. 1882, came the said plaintiffs, by their attorneys of record, and filed in the clerk's office of said circuit court amended and reformed pleadings in said case in the words and figures following, to wit:

Amended and Reformed Pleadings, &c.

In the Circuit Court of the U. S. for the Southern Dist. of Ga.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

In obedience to the order of the court passed December 2nd, 1882, directing the plaintiffs in said action, by rule day in January, 1883, to reform their pleadings so as to present their cause of action in an equitable shape, the said plaintiffs in said suit do amend and reform their said pleadings as follows:

37 To the judges of the circuit court of the United States for the southern district of Georgia:

Wm. C. Riddle, as trustee for his wife, Seny Ann S. Riddle, and children hereinafter named; Seny Ann S. Riddle, wife of said William C. Riddle; Annie E. Minar, wife of T. M. Minar, formerly Annie E. Riddle and daughter of said William C. and Seny Ann S.; Isabella U. Cheatham, formerly Riddle, wife of A. T. Cheatham and daughter of said William C. and Seny Ann S.; Louisa Newsome, formerly Riddle, wife of Joseph Newsome and daughter of said William C. and Seny Ann S.; Mary Thomas, wife of Simon S. Thomas, formerly Mary Riddle and daughter of said William C. and Seny Ann S.; Julia Riddle, daughter, and Anderson M. Riddle, John Riddle, and William H. Riddle, sons of said William C. and Seny Ann S.; Lula Edwards, daughter of Martha Edwards, now deceased, who was the daughter of said William C. and Seny Ann S.; Sallie C. Gilyard, daughter of said Martha Edwards; James M. Minar,

husband of said Annie E. Minar; A. T. Cheatham, husband of said Isabella U. Cheatham; Joseph Newsome, husband of said Louisa Newsome, and Simon S. Thomas, husband of said Mary Thomas, all of the county of Washington, in said State of Georgia, bring this their bill against said Benjamin J. Wilson, an alien and subject of the Queen of Great Britain; and thereupon your orators and oratrixes complain and say that on the twenty-third day of April, A. D. 1853, the said William C. Riddle, being seized and possessed in his own right of the lands and tenements next hereinafter
38 referred to, and having full authority and power to dispose of the same as to him seemed best, did, in consideration of his natural love and affection for his said wife and children, grant and convey to himself as trustee for the use, benefit, and advantage of his said wife, Seny Ann S., and the children of him, the said William C. and Seny Ann S., for and during the natural life of the said Seny Ann S., and, on her *d*isease, to such child or children, or representative of child or children as she might leave in life, all of the following-described property, to wit: One tract or parcel of land in said county of Washington, known as the Brantley Mill place, containing one thousand acres, and also one other tract in said county, known as the Brown place, containing five hundred acres; to have and to hold the said property to him, the said William C. Riddle, in trust for said Seny Ann S. and her children, as above specified, forever free from the debts, liabilities, and contracts of him, the said William C. Riddle, and all other persons whatsoever; all of which will more fully and particularly appear, reference being had to said deed of trust made part of the evidence and record in this case.

That said trust deed was duly recorded on the twenty-sixth day of May, A. D. 1853, in the office of the clerk of the superior court of said county of Washington, in Book Z, folio 404; that said William C. Riddle, after said grant and conveyance, held said lands as
39 trustee for his said wife and children only and under the terms of said trust deed.

And your orators and oratrixes further complain and say that on the — day of ——, in the year 1866, the said William C. Riddle was engaged in extensive planting operations and found it necessary to raise large sums of money on his own account, and that to this end he applied to the firm of Wilkinson and Wilson, of which the defendant was a member, then doing a factorage and commission business in the city of Savannah; that said Wilkinson and Wilson, in consideration of large consignments of cotton to be sent to them by said William C. Riddle, did advance to said William C., on his own account and not for said trust estate, large sums of money.

That said defendant was obliged to raise the money so supplied on the credit of his said firm and to furnish to parties so advancing money to his said firm planters' notes and mortgages and other collateral security; that he requested said William C. Riddle to provide his said firm with such collateral security, and said William C. thereupon gave a mortgage lien for a large amount upon a large body of lands owned by him in his own right, and that in said

mortgage he included the said lands embraced in said trust deed; that said William C. Riddle, at the time when he created said mortgage lien on said lands, duly notified said defendant that part of said lands was trust property, but said defendant replied that it did not matter, as he only wished to use said lien as collateral; and complainants allege and say that said defendant took said mortgage lien, with full notice that it included said trust estate as well as the individual property of said William C. Riddle; that in 1870 said first mortgage was canceled and a new mortgage lien was given to defendant, at his request, which said lien was taken and accepted by said defendant, with full notice that said trust estate was included in said lien.

And your orators and oratrixes further complain and say that said defendant, well knowing that said mortgage lien included said trust lands, caused the same to be foreclosed, and on the — day of ——, in the year 1877, bid in all of the lands covered by said mortgage lien, including the said trust estate, and caused a deed to said lands to be made and delivered to him by the sheriff of said county of Washington, and entered upon and took possession of said trust estate, with full notice of the rights of your orators and oratrixes.

And your orators and oratrixes further complain and say that they did not in any manner surrender or waive their rights in the premises, and that they have called upon the said defendant to restore said trust estate and to put them in possession of the same, but that he refused so to do and retained the possession and enjoyment of all said lands so embraced in said mortgage, including the trust estate aforesaid; all of which is contrary to equity and good conscience. To the end, therefore, that the said defendant, Benjamin J. Wilson, may, if he can, show why your orators and oratrixes should not have the relief herein prayed (the answer of said defendant under oath being hereby expressly waived) and that the rights and equities of your orators and oratrixes may be duly protected, may it please your honors to decree to them the recovery and restoration of said trust estate and lands and such sums by way of mesne profits as may be fair and just, and that said defendant be adjudged to hold said lands only as trustee for your orators and oratrixes and be required by the decree of the court to convey said lands to said William C. Riddle, as trustee, upon the uses and trusts in said deed contained, or to some other trustee to be appointed by the court, and that said mortgage lien and the deed made to said defendant under said foreclosure may be declared null and void as to said trust estate, and may be reformed or canceled so as to remove said cloud upon the title of your orators and oratrixes; and that the said William C. Riddle, as trustee as aforesaid, may be assisted by the court as to it may seem best in recovering said trust estate; and that your orators and oratrixes may have all such other and further relief in the premises as was contemplated by the order of the court aforesaid to reform the pleadings as they then appeared in said case and as the court in the exercise of its equitable jurisdiction may be able to grant.

And your orators and oratrixes, as in duty bound, will ever pray, &c.

H. D. D. TWIGGS,
GEO. A. MERCER,
E. S. LANGMEDE,
O. H. ROGERS,
Attorneys for Plaintiffs.

Endorsements: (203.) In the circuit c't of the U. S. for so. dist. of Ga. Wm. C. Riddle, trustee, *et al. vs.* B. J. Wilson. Amended and reformed pleadings in said case, as per order of court of December 2nd, 1882. Filed Dec. 26th, 1882. W. M. Heyward, dep. clerk. H. D. D. Twiggs, Geo. A. Mercer, E. S. Langmede, O. H. Rogers, pl't'ffs' att'ys.

Afterwards, to wit, on the 2nd day of January, A. D. 1883, came the said defendant, by his soliciters, and filed an entry of appearance in the words and figures following, to wit:

Entrance for Appearance for Defendant.

Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Ejectment removed from Washington superior court & equity pleadings filed.

To the clerk of the circuit court of the United States.

SIR: Please enter the appearance of Lanier & Anderson, Logan E. Bleckley, and myself as the attorneys for the defendant in the above-entitled action.

Dated January 1st, 1883.

JAMES K. HINES,
Att'y for D'f't.

43 Endorsements: (203.) Circuit court of the United States for the southern district of Georgia. Seny Ann S. Riddle *et al. vs.* Benj. J. Wilson. Ejectment, &c. Entry of appearance for defendant. Filed January 2d, 1883. W. M. Heyward, dep. clerk. Lanier & Anderson, Logan E. Bleckley, Jas. K. Hines, att'ys for def't.

Afterward, to wit, at the February, 1883, rules day, on Monday, February 5th, A. D. 1883, came the said defendant and filed his answer in the words and figures following, to wit:

Answer of Defendant.

ATLANTA, *Feb'ry 3d*, 188–.

DEAR MR. WARD: I enclose Col. Wilson's answer, which please file, and be kind enough to drop me a postal card acknowledging

receipt. It is started in full time to reach you by Monday, and I trust it may do so. My kindest regards to Judge Erskine and Mrs. Ward.

Very truly yours, &c., L. E. BLECKLEY.

P. S.—Col. Hines sent your bill of costs for copies, and an order is enclosed to pay the same, $2.15. B.

The Answer of Benjamin J. Wilson, the Defendant, in the Above-stated Case.

In the Circuit Court of the United States for the Southern District of Georgia.

WM. C. RIDDLE, Trustee of Seny Ann S. Riddle, *et al.*

vs.

BENJAMIN J. WILSON.

Bill for relief.

This defendant, answering, saith that it may possibly be true, though he does not know and cannot state positively one
44 way or the other, that the said Riddle made the deed to himself as trustee mentioned in the bill. If it was made as alleged the defendant doubts whether it was recorded. He really believes it was not, though he cannot say. He calls for strict proof of both these charges in the bill. He denies that said Riddle held said land as trustee for his wife and children, so far as any manifestation to the public or the world was concerned. On the contrary, he seemed to hold it for himself and to use it as his own. From the best information the defendant has on the subject he believes and charges that if said deed was in fact made there was no change whatever in the possession of said land or in its use, but that Riddle continued in possession and use after the date of the deed just the same as before, claiming as owner, using and enjoying as owner, paying taxes as owner, and treating himself as owner in all respects, not as trustee, but in his personal and individual capacity. It is true that in the year 1866 Riddle was planting extensively and applied to Wilkinson & Wilson for money and plantation supplies, which in that and succeeding years, up to and including a part of the year 1870, they furnished. The advances made consisted partly of money and partly of plantation supplies. A part of the consideration for making them was his promise to consign to said firm as factors and commission merchants cotton, the produce of said plantation. Consignments were in fact made, but not to the extent of his engagements nor of
45 sufficient value to meet his indebtedness, the deficit being over eighty thousand dollars at the close of all the transactions or about that sum. It is true that all the advances were made to him on his own account and not for any trust estate, his planting being all done on his own account and not for any trust

estate, although done in part upon the very premises now claimed and contended for as trust property. He gave no notice or information or hint of any trust, but, on the contrary, actually pointed out this very land as his own, calling attention to it specially. Said firm of Wilkinson & Wilson had large means and credit and did not have to resort to the means alleged in the bill to raise money for advancing to customers, though they sometimes borrowed on collaterals. It was not for that purpose that the mortgage was taken from the said Riddle, but for security alone. He did give a mortgage covering his entire plantation, consisting of ten thousand acres and embracing the lands now in controversy with others. Utterly and absolutely untrue is it that at the time or before he executed said mortgage he notified defendant that part of said lands were trust property. He gave no such notice, nor did he so hint or intimate. On the contrary, if the fact was true he concealed it and neither did or said anything to communicate information or put defendant on inquiry. He was then in possession of the
46 premises, using them as his own, and, as this defendant then believed and still believes, claiming them as his own. The mortgage was taken *bona fide* for value and without notice of any trust or claim of trust, and after it was taken and because of the security it afforded advances of money and supplies were made upon it *bona fide* and still without any notice or ground for suspicion. Equally false and unfounded is it that defendant ever replied, "It did not matter," or that "he only wished to use said lien as collateral." It is true that the first mortgage was superseded by a second, but the second was also taken without notice, just as the first was, and under like circumstances as to possession and use by said Riddle. He was apparent owner, and this defendant had no notice or suspicion to the contrary. Just as on the first mortgage, so on the second, large advances of money and supplies were made upon the faith of it, trusting to it as security, and with no notice whatever of the alleged trust or anything of the kind. Indeed, the leading object which Riddle had or appeared to have in giving the second mortgage was to furnish a basis for further credit on his part with this defendant's then firm, & he thereby succeeded in obtaining such further credit and could not have gotten it without that or some good security. After foreclosure of the second mortgage the whole mortgaged premises, except three thousand acres, were sold at sheriff's sale under the mortgage
47 *fi. fa.*, and this defendant was the purchaser. At said sale there was no distinct notice given of said trust claim or any particular claim, nor was any specific portion of the premises sold designated as the subject of an adverse title. Something was said to the effect that whoever bought would have trouble, but the warning, such as it was, applied alike to all the premises sold, and there was nothing to restrict it to this land now in controversy or any other definite part. This defendant heard nothing then about any trust. What he heard was said by John N. Gilmore and not by Riddle or any of the complainants, most of whom were present, and the substance of what Gilmore said was as above stated—namely,

that whoever bought would have trouble. The three thousand acres not sold had been claimed, in the mode applicable to claims under the laws of Georgia, by Mrs. Riddle, and for that reason could not be sold at that time. She suffered the so-called trust property, now in controversy, to be sold without interposing any claim to it, although it was embraced in the same levy with the three thousand acres which she did claim. It is not true that defendant well knew or knew at all that the mortgage deed included any trust land when he caused the mortgage to be foreclosed, nor did he know that the lands now in controversy were trust lands when he purchased
48 at the sale and took the sheriff's deed therefor, nor did he have full notice or any notice of the alleged right of complainants when he took possession of his purchase, unless what Gilmore stated at the sale, as above set forth, amounted to such notice, which defendant thinks it did not. But even if it did it was then too late to affect defendant's right by notice, as he and his firm were innocent mortgagees for value and without any notice whatever at the time they gave credit and took their security.

Defendant admits that he still has possession, and he intends, if he can, to hold it, being, as he verily believes, the true owner.

And, having fully answered, he prays to be hence dismissed with his reasonable costs.

JAMES K. HINES,
CLIFFORD ANDERSON,
L. E. BLECKLEY,
Sol's pro Compl't.

STATE OF GEORGIA, *Fulton County:*

I, Benjamin J. Wilson, do solemnly swear that the foregoing answer is true, so help me God.

B. J. WILSON.

Sworn to and subscribed this 3d day of February, 1883, before me—

W. B. SMITH,
U. S. Com.

Endorsements: (203.) U. S. circuit court, eastern division, so. dist. Ga. W. C. Riddle, trustee, *et al. vs.* B. J. Wilson. Answer. Filed Feb. 5th, 1883. W. M. Heyward, dep. cl'k.

Amendment to Answer, &c.

Afterward, to wit, on the 12th day of April, A. D. 1883, at
49 a stated term of the circuit court of the United States for the eastern division, southern district of Georgia, begun and holden in the U. S. court-rooms, in the city of Savannah, on Monday, April the 9th, 1883—present, the Honorable John Erskine, judge of said district, presiding—the defendant filed an amendment to his

answer, and the court made an order thereon in the words and figures following, to wit:

Bill for Relief.

In the Circuit Court of the United States for the Southern District of Georgia.

WM. C. RIDDLE, Trustee of Seny Ann S. Riddle, *et al.*
vs.
BENJAMIN J. WILSON.

The amended or supplemental answer of Benjamin J. Wilson, the defendant in the above-stated cause.

Since the filing of the original answer in this cause the defendant has been informed and he verily believes and so charges that the deed or writing which the complainants charge in their bill was executed by the said Wm. C. Riddle to himself as trustee was not in fact executed, signed, or delivered, nor even written, at the time when it bears date nor until within the last few years, and that it is in truth and in fact a much younger instrument than the mortgage under which this defendant derived and claims title. Defendant, on his information and belief, charges and avers that said paper-writing was fabricated and antedated, and was never in fact recorded, and could not have been recorded, at the time the certificate of record entered thereon represents it to have been recorded.

LANIER & ANDERSON,
L. E. BLECKLEY,
J. K. HINES,
Sol's Pro Compl't.

NORTHERN DISTRICT OF GEORGIA, *Fulton County:*

Benjamin J. Wilson, being duly sworn, deposeth and saith that the foregoing answer, both as to the fact and time of discovering the matter thereof and as to the matter itself, is true.

B. J. WILSON.

Sworn to and subscribed before me this 7th day of April, 1883.
A. E. BUCK,
U. S. Com'r.

To the complainants and their solicitors:

Please take notice that on the cause shown in the foregoing answer the defendant will move the court in which the cause is pending for leave to file said answer as an amendment to the original answer. The motion will be made on Thursday next, or as soon thereafter as counsel can be heard.

This April 7th, 1883.

J. K. HINES,
LANIER & ANDERSON,
L. E. BLECKLEY,
Def't's Sol's.

Notice of intended motion acknowledged. Copy and all further service waived this 9th April, 1883.

GEO. A. MERCER,
Of Counsel for Mrs. Riddle et al.

In open court, April 12th, 1883.
Motion heard and granted. Let the said amended answer be filed and the entry of filing be made herein by the clerk.

JOHN ERSKINE, *Judge.*

51 Endorsements: In equity. U. S. circuit court, southern district of Georgia. Riddle *et al vs.* Wilson. Amendment to answer, &c., &c. Filed April 12th, 1883. H. H. King, clerk. Lanier & Anderson, Hines, Bleckley.

Afterwards, to wit, on the 30th day of April, A. D. 1883, came the said complainants, by their solicitors of record, and filed their replication to defendant's answer in the words and figures following, to wit:

Replication to Defendant's Answer.

In the Circuit Court of the U. S. for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al vs.* B. J. WILSON.

Replication of complainants to the answer of defendant as amended and filed April 12th, 1883.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto say that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive,
52 and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

H. D. D. TWIGGS,
GEO. A. MERCER,
E. S. LANGMEDE,
O. H. ROGERS,
For Plaintiffs.

Endorsements: In the circuit court of the U. S. for the southern dist. of Ga. Seny Ann S. Riddle *et al vs.* B. J. Wilson. Replication. Filed in clerk's office April 30th, 1883. M. Erwin, dep. clerk. H. D. D. Twiggs, Geo. A. Mercer, E. S. Langmede, O. H. Rogers, for pl't'ffs.

Afterwards, to wit, on the 16th day of July, A. D. 1883, came the said defendant, by Lanier & Anderson, his solicitor, and filed an application to take testimony by commission in the words and figures following, to wit:

Application to Take Testimony by Commissioner.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

Hon. John Erskine, United States judge for the southern district of Georgia:

53 The petition of Benjamin J. Wilson respectfully shows that a bill is now pending on the equity side of the court, in the fifth circuit court of the United States for the southern district of Georgia, in which William C. Riddle as trustee of Seny Ann S. Riddle *et al.* are complainants and your petitioner is defendant, and that the parties are at issue in said cause. Petitioner states that he desires to have the testimony of himself, he being a resident of Fulton county, in said State; of Thomas Spencer, a resident of Hall county, in said State, and of —— Trueluck, a resident of Washington county, in said State, they being material witnesses for the defendant in said case. The said Thomas Spencer is an old man and resides about three hundred miles from the city of Savannah, Georgia, and petitioner resides about the same distance from said city. It would be impracticable for the reason stated to procure the attendance of the said Spencer before an examiner in Savannah, and it would be highly inconvenient for your petitioner to attend before such examiner; besides, as neither of your petitioner's attorneys reside in Savannah, but all of them reside nearly two hundred miles therefrom, it would be very inconvenient for either of them to attend an examination of witnesses before such an examiner.

54 Petitioner therefore prays your honor to make an order allowing him to take the testimony of said witnesses in answer to written interrogatories by commissioner, and that your honor will appoint commissioners to take such testimony. Petitioner suggests as suitable persons to act as commissioners to take his testimony Marshall J. Clark and Marshall de Graffenried, of Atlanta, and as suitable persons to act as commissioners to take the testimony of said Spencer, S. C. Dunlap and Claude Estes, Esq., of Gainesville, Ga., and as suitable persons to take the testimony of said Trueluck, F. Chambers and J. W. Lindsey, of Irwinton, Georgia. Petitioner suggests these persons because they are lawyers of well-known character and wholly disinterested, and without the knowledge of either one of them, he making the suggestion only because he supposes your honor would feel embarrassed in naming commissioners for want of information, in the absence of such suggestion. Petitioner would be equally well satisfied with the selection of any other disinterested and competent persons whom your honor might see proper to name. Should your honor deem the reasons assigned for taking the testimony of these witnesses or either of them by commissioner insufficient, then petitioner prays that your honor will order their testimony to be taken before William Cassard, Esq., the

examiner of said court, at Savannah, Georgia, under such notice to complainants or their solicitors as your honor may see proper to require.

And your petitioner will ever pray, &c.

Macon, Ga., July 14th, 1883.

LANIER & ANDERSON,
Solicitors for Defendant.

55 And thereupon the following order was made by the Hon. John Erskine, judge for the said southern district of Georgia, and entered of record in the words and figures following, to wit:

I name and appoint Marshall J. Clark & Marshall de Graffenried, Esquires, counsellors-at-law, to take the testimony — said witnesses in the city of Atlanta after legal and reasonable notice to the opposite parties or their counsel and in accordance to law and in conformity to the equity rules of the U. S. Supreme Court and of this court.

Granted without prejudice to either party.

Let a copy of this petition and order be served upon the comp'ts or their counsel at least thirty days prior to the time to be appointed by the commissioners for the taking of the testimony as aforesaid in said city of Atlanta. The clerk will furnish a copy of this petition & order to the Messrs. Lanier & Anderson, solicitors for defendant, — on comp'ts or their counsel; which service — in accordance to said order and rules of courts.

Hull Co., Ga., July 18th, 1883.

JOHN ERSKINE, *Judge.*

Filed July 20, 1883.

M. ERWIN,
Dep. Clerk.

Endorsements: In the 5th circuit court of the U. S. for the eastern division, so. dist. of Ga. *In re* Riddle *et al. vs.* B. J. Wilson. Equity. Application to take testimony by commissioners. Filed in clerk's office July 16th, 1883. Marion Erwin, dep. clerk C. C. Lanier & Anderson. Cert. copy of petition & order sent L. & A. July 20th, 1883.

56 Afterwards, to wit, on the 8th day of October, A. D. 1883, came the said complainants and filed in said clerk's office an application to appoint a commissioner to take testimony in the words and figures following, to wit:

Application to Appoint Commissioner to Take Testimony.

In the Circuit Court of the United States, Fifth Circuit, Southern District Ga.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Ejectment & bill in equity amendment.

To the hon. judge of said court:

Whereas Ira Walden & his wife, Mrs. Ira Walden; W. E. Clarke, J. N. Gilmore, Reuben Mayo, Dr. D. L. Cheatham, Mark Newman,

M. H. Odom, A. Youngblood, A. L. Roughton, A. M. Mayo, W. C. Riddle, Jno. P. Riddle, & Augustus D. Jernigan are material witnesses for the plaintiffs in the above-stated case and are residents of the county of Washington, State of Georgia, except A. D. Jernigan, who resides in Florida; and, it being desired to take the testimony of these witnesses on part of plaintiffs, and inasmuch as it is necessary to have them taken in writing and to avoid expense, your petitioners, Seny Ann Riddle & others, pray your honor to appoint some suitable and competent person as commissioner to take the testimony of the above-named witnesses in the town of Sandersville, Washington county, Georgia, under the rules and regulations of the circuit c't for the taking — depositions & testimony, with the usual power to subpo-nea & compel such attendance and
57 furnish the defendants opportunity to cross-examine the same.

E. L. LANGMADE,
O. H. ROGERS,
B. D. EVANS,
Att'y- for Pl't'ffs.

And thereupon the following order was made and entered of record:

Upon hearing the above petition in chambers, it is ordered that William G. Robson be, and is hereby, appointed a commissioner to take testimony of such witnesses as may be brought before him by either party in the case of Seny Ann Riddle *et al. vs.* B. J. Wilson, ejectment & bill in equity in and thereof, and he be empowered to sit in town of Sandersville, Ga., for such time or times as he may appoint, & to adjourn from day to day as parties may desire till all are examined; and that he have power to issue subpœnas & compel the attendance of witnesses as other United States commissioners do have under the laws of the United States and rules of circuit courts of United States; and that said commissioner do transmit under his hand & seal the record of such testimony to the circuit court of the United —, at the Nov'r term thereof, 1883, at Savannah, Ga., and that the compensation and fees of said commissioner be regulated by the laws of U. S. in reference to commissions, and paid by the parties to this suit; and that this order be entered upon the minutes of the court in Savannah.

Macon, Ga., Oct. 8th, 1883.

JAS. W. LOCKE, *Judge.*

Certified copy made and transmitted to W. G. Robson Oct. 11th, 1883.

Endorsements: In circuit court of the United States for
58 the southern dist. of Georgia. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Application to appoint com'r to take testimony. Order appointing W. G. Robson special com'r. Certified copy made & transmitted to W. G. Robson Oct. 11, 1883. Filed Oct. 8, 1883. M. Erwin, dep'y clerk C. C.

Afterwards, to wit, on the — day of October, 1883, the following order was made and entered of record in the words and figures following, to wit:

Order to Allow Complainants to Withdraw Deed from File, &c.

In the Circuit Court, Eastern Division, Southern District of Georgia.

WM. C. RIDDLE, Trustee for Seny Ann Riddle, *et al.*

vs.

B. J. WILSON.

Ejectment & equity by amendment.

To the Hon. James W. Locke, judge, presiding in said court:

The application of the complainants in the above-stated case respectfully shows that they desire to examine certain witnesses living in the county of Washington, State of Georgia, touching the genuineness of the deed which is the foundation of the above action; and that said deed is now of file in the clerk's office of the circuit court of the United States for the southern district of Georgia, in the city of Savannah, attached to the interrogatories of Ira Walden, Esq., whose testimony has been taken in said case.

Wherefore your petitioners pray your honor to pass an order directing the clerk of said court to allow complainants' counsel to withdraw said deed from said office for the purpose of said examination.

59 And your petitioners will ever pray, &c.

O. H. ROGERS,
E. S. LANGMEDE,
B. D. EVANS,
Att'ys for Complainants.

Ejectment & Equity by Amendment.

In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

WM. C. RIDDLE, Trustee for Seny Ann S. Riddle, *et al.*

vs.

B. J. WILSON.

The foregoing application of complainants read and considered; whereupon it is ordered that the clerk of the circuit court of the eastern division and southern district of Georgia, at Savannah, Ga., allow the counsel for complainants in the above-stated case to withdraw the deed filed in said office, with certain interrogatories, from William C. Riddle to William C. Riddle, trustee, for the purpose of allowing said complainants to examine certain witnesses as to the genuineness of said deed; and it is further ordered that said counsel return said deed to the office of said clerk on or by the first day of the November term, 1883, of said court.

JAMES W. LOCKE, *Judge.*

Endorsements: In the U. S. cir. c't, eastern division, so. dist. Georgia. Wm. C. Riddle, &c., compl't, and B. J. Wilson. Order to allow compl't to withdraw deed from file, &c. Filed Oct., 1883. M. Erwin, dep. clerk. Deed returned to clerk's office Nov. 7th, 1883. M. Erwin, dep. cl'k.

Afterwards, to wit, on the 21st day of November, A. D. 1883,
60 the following petition and order thereon, made by the Hon. Don A. Pardee, circuit judge for the fifth judicial circuit, was filed and entered of record:

Petition & Order Granting Leave to Withdraw Deed and Appointing Commissioners to Take Testimony.

United States of America to the judges of the circuit court of the United States for the southern district of Georgia:

Your petitioner shows that a suit is now pending in said court in favor of Seny Ann Riddle and her children against your petitioner for recovery of fifteen hundred acres of land in Washington county, Georgia, which suit is founded on a paper purporting and claimed by the plaintiffs to be a deed from Wm. C. Riddle, the husband of said Seny Ann and father of said children, to him as trustee for his said wife and children. To this suit petitioner, among other things, answered that the said deed is not genuine, but was & is a forgery, and testimony has been taken by both sides on this issue. The deed in question is now attached to interrogatories and answers belonging to the files of said court, and your petitioner is advised that it is important to subject said instrument to the inspection and examination of experts, one or more of whom reside in Atlanta, Georgia. Wherefore your petitioner prays for an order allowing and authorising the clerk of said court to transmit said deed and the papers it is attached to to the clerk of the court of the northern district of Georgia,
at Atlanta, Georgia, there to remain one week subject to in-
61 spection, and then to be returned by the last-named clerk to the clerk of the court at Savannah by express; and, further, that the clerk of the court of said northern district of Georgia be appointed as commissioner to take the testimony of such witnesses as may be brought before him to testify upon your petitioner giving the plaintiffs or their counsel five days' notice of the time and place of taking such testimony.

November 3d, 1883.

J. K. HINES,
LANIER & ANDERSON,
Of Counsel for Petitioner.

Order.

Let the order within prayed for be granted, and accordingly the clerk of the circuit court for the southern district will transmit by express to Col. A. E. Buck, clerk of the circuit court for the northern district of Georgia, at Atlanta, the original document within described, to remain one week subject to inspection, and then to be returned to the clerk of the circuit court for the southern district, and

A. E. Buck is appointed commissioner to take evidence in said case upon five days' notice of the time and place fixed for the examination of witnesses.

Atlanta, Nov. 20th, 1883.

DON A. PARDEE,
Circuit Judge.

Endorsements: In the United States circuit court for the eastern division, southern district of Georgia. Wm. C. Riddle *vs.* B. J. Wilson. Petition and order granting leave to withdraw deed and appointing commissioner to take testimony, &c. Filed Nov. 21st, 1883. M. Erwin, dep. clerk. Certified copy sent to Col. Buck Nov. 21st, 1883.

62 *Trial of Issue of Fact.*

In the Circuit Court of the United States for the Eastern Division, Southern District of Ga. November Term, 1883. In Equity.

WM. C. RIDDLE, Compl't, and B. J. WILSON, D'f't.

WEDNESDAY, *December 5th*, 1883.

Names of jurors in attendance empaneled in this cause to try certain issue of fact, to wit:

1, John Scriven; 2, John C. Rowland; 3, Jackson S. Habersham; 4, Thomas A. Maddox; 5, Abiel C. Miller; 6, Geo. N. Nichols; 7, Frank Jones; 8, Samuel Mienhard; 9, Raymond R. Jackson; 10, Philip D. Doffin; 11, James Grant; 12, Albert Jackson.

And now comes the complainant, by H. D. D. Twiggs and Geo. A. Mercer, his attorneys, and the defendant also comes, by Lanier & Anderson and James K. Hines, his attorneys; whereupon, to try the issue joined, a jury being called, the jurors of the jury whereof mention has been made likewise came, to wit, 1, John Scriven; 2, John C. Rowland; 3, Jackson S. Habersham; 4, Thomas A. Maddox; 5, Abiel C. Miller; 6, Geo. N. Nichols; 7, Frank Jones; 8, Samuel Mienhard; 9, Raymond A. Jackson; 10, Philip D. Doffin; 11, James Grant; 12, Albert Jackson, who, being called, elected, tried, and sworn the truth to speak in this behalf and true verdict render according to the evidence, upon their oath say to the first issue
63 of fact submitted by the court, to wit: "Is the deed of trust presented a true, valid, and authentic instrument executed at the time it purports to be?"—

We, the jury, find that the deed of trust presented is a true, valid, and authentic instrument executed at the time it purports to be.

JOHN SCRIVEN, *Foreman.*

To the second issue of fact submitted by the court, to wit: "Did the defendant, B. J. Wilson, have notice of the existence of this trust deed at or before the execution of mortgage by plaintiff to defendent, May 5, 1870, or before the sheriff's sale in 1876?"—

We, the jury, find that the defendent, B. J. Wilson, had notice of the existence of this trust deed at or before the execution of the

mortgage by plaintiff to defendent, May 5, 1876, and before the sheriff's sale — 1876.

JOHN SCRIVEN, *Foreman.*

Exceptions Pendente Lite.

In the 5th Circuit Court of the United States for the Southern District of Georgia. In Equity.

WILLIAM C. RIDDLE, Trustee for Seny Ann S. Riddle (His Wife) and Their Children, *et al.*

vs.

B. J. WILSON.

The evidence introduced both by complainants and defendents having been submitted and read to the presiding judge in the above-stated case, sitting as chancellor, he, over the objection of de-
64 fendent's counsel, submitted the issues of facts arising in said case to a jury; to which counsel for defendent objects and now excepts and prays that this exception be duly noted and allowed.

In open court this December 3d, 1883.

JAMES W. LOCKE,
U. S. Dis. Judge, Presiding.

A jury having been empannelled and sworn to try said above-stated case, the question was submitted to the court by complainant's counsel whether the bill of complainants and the answer of defendent should be read to the jury. Defendent's counsel claimed that they should be, and further claimed that the answers of defendent, so far as they are responsive to the allegations of the bill, *was* evidence to be considered by the jury in making up their findings on the issues of fact submitted to them in said case; but the court decided that said answers, even though thus responsive, are not evidence in said case, because the defendent had been separately examined and had testified as a witness in his own behalf and to the same effect in said case; to which ruling defendent's counsel excepted.

The court further directed that the bill of complainants and the answers of defendants be not read to the jury; to which ruling counsel for defendant also excepted. Defendent's counsel prays that the foregoing exceptions be noted and allowed, and the same are allowed in open court.

J. W. LOCKE, *Judge.*

In the further progress of the trial of the foregoing case
65 defendent offered in evidence before the jury the mortgage *fi. fa.* in favor of said defendent against said Riddle for principal, $59,000, besides interest, making a total of over $80,000; the sheriff's levy of the same on 10,000 acres of land (which includes the land in dispute) and the deed of the sheriff to the land so sold by the sheriff, which includes the land in controversy. The court rejected this evidence as not pertinent to the question submitted to the jury, and defendant excepted. The court said it might be stated

that the sheriff had levied on and sold the land is dispute and that defendant claimed title under said sale, but the papers offered should not be read in evidence; to which ruling defendant's counsel excepted & prays that said exception be allowed, and the same *are* allowed.

J. W. LOCKE, *Judge.*

Defendant also offered in evidence a petition filed by Mrs. Seney Ann S. Riddle (wife of said William C. Riddle) in 1876 to establish a lost deed from Anderson Riddle (father of said William C.) to said William C. Riddle, in trust for his said wife and their children, to three thousand acres of the said tract of ten thousand acres of land levied on by the sheriff as aforesaid under said mortgage *fi. fa.* for the purpose of showing that although it is claimed that the trust deed now relied on for fifteen hundred acres of said land had been in existence and recorded in 1853, and although it is alleged
66 that said deed for said fifteen hundred acres was then lost and the record thereof destroyed, no application to establish a copy of said deed for said fifteen hundred acres was then made. The court rejected said evidence, but allowed the fact to be stated that such a petition was filed; to which ruling defendant's counsel excepted and prays that said exception be allowed, and the same is allowed.

J. W. LOCKE, *Judge.*

In the progress of said trial defendant's counsel also offered in evidence the fact (certified to by the commissioner before whom said Ira Walden was examined as a witness in said case) that as soon as said Ira Walden testified before said commissioner *that* he made a memorandum at the time he witnessed the deed for the land in dispute from William C. Riddle to himself in trust for his wife and children; that he had witnessed such a deed, and that he had said memorandum at his house; that defendant's counsel served said Walden with a *subpœna duces tecum* to produce said memorandum before the commissioner to be used in evidence on the next day, and that although said commissioner continued to examine witnesses in said case that day and all of the following day said Walden did not produce said memorandum or make any answer whatever to said *subpœna duces tecum.* The court rejected said evidence, and defendant's
67 counsel excepted and now excepts and prays that said exception be allowed, and the same is allowed.

JAS. W. LOCKE, *Judge.*

Endorsements: In the circuit court of the United States, eastern division, southern district of Georgia. Wm. C. Riddle, trustee, compl't, and B. J. Wilson, d'f't. In equity. Exceptions made *pendente lite* by counsel for d'f't on submitting certain issues of fact to a jury and on the admission of certain evidence to the jury. Filed Dec. 5, 1883. Marion Erwin, deputy clerk.

Exceptions Pendente Lite.

WILLIAM C. RIDDLE, Trustee for his Wife, Seny Ann S. Riddle, and Their Children, *et al.*, Complainants,

vs.

BENJAMIN J. WILSON, Defendant.

The presiding judge in the above-stated case having, notwithstanding the objection of defendant's counsel, called in a jury in said case to aid him as chancellor in finding on the facts of said case, and having submitted to said jury the two following questions or issues of fact—1st, Is the deed of trust presented a true, valid, and authentic instrument executed at the time it purports to be? 2d, Did the defendant, B. J. Wilson, have notice of the existence of this trust deed at or before the execution of the mortgage by plaintiff to defendant, May 5th, 1870, or before the sheriff's in 1876?—delivered a written charge to the jury, giving them instructions as to their findings on said issues; to the following parts
68 of which charges or instructions defendant, by his counsel, then & there excepted and prays that said exceptions be allowed and entered of record, to wit:

Defendant's counsel excepts to the following instruction bearing on the first issue submitted: "Upon the question of the validity of the alleged deed the circumstance that a claim was made for 3,000 acres and no claim was made for the 1,500 has been urged as against its validity, and it becomes a question for you to consider whether it is a necessary or probable presumption that in the event of a loss of two deeds from two different parties and under the circumstances of this case should or should not each be equally well remembered and so well remembered as to be established and rights under it demanded. One, you will remember, was from the father-in-law of Mrs. Riddle to his son in trust for her and her children, and actually passed a grant and possession at the time it was made. In the other the grantor was also the grantee, and it therefore possessed but an equitable title and did not become an actual conveyance. Under these circumstances is it a necessary or a probable presumption that if the deed granting and conveying title and possession should be sufficiently well remembered in its date and terms as to be readily established, the other making no such conveyance of possession, should have been as well remembered, or if whether the fact of not urging it at the same time is presumptive evidence that it had never been made?"

69 Defendant's counsel excepts to the above charge because it does not fairly or fully state the bearing of the fact or circumstance referred to therein on the point in issue. He also excepts to that part of said instruction as erroneous which defines the legal effect of the deed from William C. Riddle to himself as trustee for his wife and their children. He further excepts to the inferences drawn and suggested in said instruction to the jury as being unauthorized by the circumstances recited or by any evidence in the case. Defendant therefore prays that this exception to said instruction be allowed and made part of the record of said case.

I certify that I gave the foregoing instruction complained of, and order that said exception be allowed and entered of record.

JAS. W. LOCKE, *Judge.*

The court further instructed the jury in relation to their finding on said first issue as follows: "The absence of all evidence upon the subject of the deed upon the trial of the claim for 3,000 acres, which would have been immaterial and irrelevant in the pending issue, should have no weight in this consideration."

Defendant's counsel excepts to this charge as erroneous. He claims that the evidence shows that on the trial of the claim for the 3,000 acres William C. Riddle was offered as a witness to prove what notice he gave defendant prior to or at the execution of the mortgage as to the existence of any trust claim in the lands mortgaged, and that he was asked and undertook to testify pre-
70 cisely what he told defendant as to there being any such claim or claims, and that this being so, his failure then to testify that he told defendant of any trust claim to the 1,500 acres now in dispute is a very important circumstance as tending to show that in fact no notice of any claim for 1,500 acres was given to defendant, and as tending further to show that said Riddle's evidence taken in this present case is not worthy of belief, because when he testified in the claim case for 3,000 acres and when the transaction was fresher in his recollection he did not claim that the notice he gave defendant prior to the mortgage had any reference whatever to a trust deed for 1,500 acres of the land mortgaged, but expressly stated that the notice he gave was about the 3,000 acres only. Defendant's counsel, for these reasons, excepts to the foregoing instruction and prays that this exception be allowed and entered of record.

I certify that I gave the instruction complained of and do allow the foregoing exceptions, and order it entered as part of the record of said case.

JAS. W. LOCKE, *Judge.*

On the 2d issue submitted the court gave the following instructions: "So if you find in this case that any such notice came to the knowledge of B. J. Wilson at any time during the transactions or advances which finally led to the taking of the mortgage as security, and which it is claimed were made upon the credit of this property, as would put a reasonable man upon his guard and induce him to make an investigation as to the true state of affairs at any
71 time before making the mortgage, or if at any time before the sale under the mortgage, you will find that he had notice, and state in your finding when the notice was had—whether before the mortgage or before the sale; otherwise you will find that he had no notice."

Defendant's counsel excepts to said instruction as erroneous because, 1st, it directed the jury that notice "at any time during the transactions or advances which finally led to the taking of the mortgage as security" is sufficient notice, whereas it is claimed that the jury should have been instructed that the notice ought to have been

at the time the mortgage was made or whilst the parties were in treaty about a mortgage or that in some other way the notice ought to have been connected with the making of the mortgage; 2d, said instruction is excepted to because not authorized by the evidence in said case; 3d, because the instruction is too vague and indefinite and does not sufficiently explain what sort of notice was required, whereas it should have informed the jury that notice in some way should have been given of the claim now set up, and that, too, in connection with the treaty for or the making of the mortgage.

Defendant prays that this exception be allowed also and entered of record.

I certify that I gave the foregoing instruction complained of, and order that the said exception be allowed and entered of record in said case.

JAS. W. LOCKE, *Judge.*

It is ordered that all the foregoing exceptions be allowed and entered as a part of the record in said case.

72 Dec. 5, 1883.

JAS. W. LOCKE, *Judge.*

I have certified the foregoing exceptions, notwithstanding such practice is considered unnecessary in chancery proceedings.

JAS. W. LOCKE, *Judge.*

Endorsements: In the United States circuit court, eastern division, so. district of Georgia. Wm. C. Riddle, trustee, compl't, and B. J. Wilson, d'f't. In equity. Exceptions by counsel for d'f't to instructions given by the court to the jury on the trial of certain issues of fact. Filed Dec. 5, 1883. Marion Erwin, deputy clerk.

Final Decree.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. November Term, 1883. In Equity.

WILLIAM C. RIDDLE, Trustee, *et al.*, Compl'ts,
and
B. J. WILSON, Defend't.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

The court, upon the proof submitted, finds and decrees that the deed of trust presented by complainants is a true, valid, and authentic instrument, executed at the time it purports to be; that the defendant, B. J. Wilson, had notice of the existence of this trust deed at or before the execution of the mortgage by the complainant, William C. Riddle, to defendant, May 5th, 1870, and before the

73 sheriff's sale in 1876; that the defendant acquired no valid title to the lands embraced in said trust deed by virtue of

the sheriff's deed made to him in 1876; that the land embraced in said trust deed, made the twenty-third day of April, 1853, signed by William C. Riddle and witnessed by Ira Walden, J. P., and Franklin Tanner, said land including the Brantley Mill place, containing one thousand acres, and the Brown place, containing five hundred acres, with the appurtenances, is the property of the complainants, Seney Ann S. Riddle and her children and grandchildren, under the terms and provisions of said trust deed; that this decree by its own force and effect do establish in and confirm to the said William C. Riddle, trustee, and his successors in the trust his right and title to said land, with the appurtenances and the rents and profits upon the uses and trusts in said deed set forth, with full right to the possession, use, and control of the same; that the said defendant by the first day of January, 1884, do restore the possession, use, and control of the said trust estate to the said William C. Riddle, trustee, and his successors in the trust; that the mortgage lien created by said William C. Riddle May 5, 1870, to said defendant and the deed executed and delivered to said defendant by the sheriff of the county of Washington on the — of ——, 1876, are null, void, and of no effect as to the land and appurtenances
74 embraced in said trust deed; that the complainants are entitled to the sum of three thousand one hundred and sixty-six $\frac{50}{100}$ dollars ($3,166.50) for the rents and mesne profits of said land from the period when said defendant first took possession and control of the same to the date of this decree, to be recovered by the said William C. Riddle, trustee, or his successors in the trust, and that process for the recovery of the same, in the nature of a writ of execution at common law in actions of assumpsit, may be issued by the clerk of this court upon the application of said trustee against the property of said defendant; that complainants do recover from said defendant the costs of said suit, to be taxed by the clerk, and do have execution thereof.

Savannah, Ga., Dec. 6th, 1883, in open court.

JAS. W. LOCKE,
U. S. District Judge, Presiding.

Endorsements on above: In the circuit court of the U. S. for the E. D. of the southern dist. of Ga. November term, 1883. Wm. C. Riddle, trustee, *et al. vs.* B. J. Wilson. In equity. Final decree. Filed in clerk's office Dec. 6th, 1883. Marion Erwin, deputy clerk.

Petition for and Order Allowing Appeal and Supercedias.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

To the honorable the fifth circuit court of the United States for the southern district of Georgia, Hon. James W. Locke, judge, presiding:

75 The petition of Benjamin J. Wilson, the defendant in the cause hereinafter stated, respectfully shows that he desires to enter an appeal to the Supreme Court of the United States from the decree against him during the present—that is, the November—term,

1883, of the said the fifth circuit court of the United States for the southern district of Georgia in the case following, to wit: William C. Riddle, as trustee for his wife, Seney Ann S. Riddle, and children hereinafter named, and Seney Ann S. Riddle, wife of said William C. Riddle; Annie E. Minar, wife of James M. Minar (formerly Annie E. Riddle) and daughter of said William C. Riddle and Seney Ann S.; Isabella U. Cheatham, formerly Riddle, wife of A. T. Cheatham and daughter of said William C. and Seney Ann S.; Louisa Newsome, formerly Riddle, wife of Joseph Newsome and daughter of said William C. and Seney Ann S.; Mary Thomas, wife of Simon S. Thomas, formerly Mary Riddle, and daughter of said William C. and Seney Ann S.; Julia Riddle, daughter, and Anderson M. Riddle, John Riddle, and William H. Riddle, sons, of said William C. and Seney Ann S.; Lula Edwards, daughter of Martha Edwards, now deceased, who was the daughter of said William C. and Seney Ann S.; Sallie C. Gilyard, daughter of said Martha Edwards; James M. Minar, husband of said Annie E. Minar; A. T. Cheatham, husband of said Isabella U. Cheatham; Joseph Newsome, husband of said Louisa Newsome, and Simon S. Thomas, husband of said Mary
76 Thomas (all citizens and residents of Washington county, in the said State of Georgia), complainants, *versus* Benjamin J. Wilson (an alien and subject of the Queen of Great Britain), defendant, being a cause in equity, in which a final decree was rendered in favor of said complainants by said court on the (6th) sixth day of December, A. D. eighteen hundred and eighty-three. Your petitioner states that the property and money involved in said suit, and for which said decree was rendered, amounts in value to more than five thousand dollars, exclusive of interest and costs. Petitioner tenders herewith a supersedeas bond for the sum of seven thousand five hundred dollars, signed by himself as principal and Uriel B. Wilkinson as surety, which he prays may be accepted and approved. Petitioner also prays that his appeal from said decree be duly allowed; and petitioner will ever pray, &c.

CLIFFORD ANDERSON,
Solicitor for Petitioner.

Fifth Circuit Court of the United States for the Southern District of Georgia, Eastern Division. November Term, 1883.

In open court this December 15th, 1883, it is ordered that the appeal of Benjamin J. Wilson be allowed as prayed for in his foregoing petition. It is further ordered that the bond for seven thousand five hundred dollars, executed by the said Benjamin J. Wilson as principal and Uriel B. Wilkinson as surety, be approved, and that it operate as a supersedeas to said decree until said ap-
77 peal is disposed of on the said Wilson paying the costs which have accrued in said case and for transmitting the record of said case to the Supreme Court of the United States or tendering the clerk security satisfactory to him for the payment of said costs when ascertained.

It is also ordered that the clerk of this court do send up without delay to the October term, 1884, of the Supreme Court of the United

States, duly certified according to law, the said decree and the bill, answer, pleadings, depositions, evidence, and proceedings in said cause; and counsel for said appellant having requested that the original deed on which said suit is founded, purporting to have been executed by William C. Riddle on the 23d day of April, 1853, the two original papers used in evidence signed by said Riddle and attached to the depositions of B. F. Moore as Exhibits "A" and "B," the original letter used in evidence, signed "S. Truluck" and admitted to be his genuine letter, and signature, and the original account attached to the depositions of said S. Truluck and admitted to be in his handwriting, except the pencil marks, be all sent up in connection with the certified record of said cause for the inspection of the Supreme Court; and it being the opinion of this court that it is necessary that said specified original papers should be inspected by the Supreme Court on the hearing of said appeal, it is ordered

78 that the clerk of this court do send up said specified original papers to said Supreme Court by express, in a separate package, addressed to the clerk of said Court, accompanying said original papers with a special certificate identifying said papers as original papers used on the hearing of said cause in this court, and stating in said certificate that they are sent up to the Supreme Court in pursuance of the order of this court for the inspection of said Court on the hearing of said appeal.

It is further ordered that the foregoing petition of said Wilson for the allowance of said appeal and this order be entered on the minutes of this court.

JAS. W. LOCKE,
U. S. Dis. Judge, Presiding.

Endorsements on above: In the circuit court of the United States, eastern division, so. dist. of Georgia. Wm. C. Riddle, trustee, &c., vs. B. J. Wilson. In equity. Petition for and order allowing appeal & supercidias. Filed Dec. 15, 1883. Marion Erwin, dep. clerk C. C.

Appeal Bond.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

In the Fifth Circuit Court of the United States for the Southern District of Georgia. In Equity.

And decree for complainants at the November term, 1883.

WILLIAM C. RIDDLE, as trustee for Seney Ann S. Riddle and children (hereafter named), and Seney Ann S. Riddle, wife of said William C. Riddle; Annie E. Minar, wife of James W. Minar (formerly Annie E. Riddle) and daughter of said William C. Riddle and Seney Ann S.; Isabella U. Cheatham, formerly Riddle,

79 wife of A. T. Cheatham and daughter of said William C. and Seney Ann S.; Louisa Newsome, formerly Riddle, wife of Joseph Newsome and daughter of said William C. and Seney Ann S.; Mary Thomas, wife of Simon S. Thomas, formerly Mary

Riddle, and daughter of said William C. and Seney Ann S.; Julia Riddle, daughter, and Anderson M. Riddle, John Riddle, and William H. Riddle, sons, of said William C. and Seney Ann S.; Lula Edwards, daughter of Martha Edwards, now deceased, who was the daughter of said William C. and Seney Ann S.; Sallie C. Gilyard, daughter of said Martha Edwards; James M. Minar, husband of said Annie E. Minar; A. T. Cheatham, husband of said Isabella U. Cheatham; Joseph Newsome, husband of said Louisa Newsome, and Simon S. Thomas, husband of said Mary Thomas (all being citizens and residents of Washington county, State of Georgia), Complainants,

versus

BENJAMIN J. WILSON, an alien and British subject, resident in Fulton county, State of Georgia, Defendant.

Know all men by these presents that we, Benjamin J. Wilson, as principal, and Uriel B. Wilkinson, of the county of Coweta, as surety, are held and firmly bound unto the said above-named complainants in the case above stated in the sum of seven thousand five hundred dollars, to be paid to the said complainants, their executors, administrators, or successors in said trust; to which payment, well
80 and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, by these presents.

Sealed with our seals and dated this thirteenth day of December, eighteen hundred and eighty-three.

Whereas the said Benjamin J. Wilson, the defendant in the above-stated cause, has taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-stated cause at the said November term, 1883, of the said circuit court of the United States for the southern district of Georgia in favor of the said above-named complainants as aforesaid:

Now, therefore, the condition of this obligation is such that if the said Benjamin J. Wilson shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

BENJAMIN J. WILSON. [L. S.]
URIEL B. WILKINSON. [L. S.]

Sealed and delivered in the presence of—
JOHN ERSKINE,
U. S. Judge.

STATE OF GEORGIA, *County of Fulton:*

Personally came Uriel B. Wilkinson, who signed the foregoing bond as surety, who, being duly sworn, says that he is a resident of Coweta county, in said State, and that his property consists mainly of real estate located in said State. He further swears that he is worth fully forty thousand dollars over and above his debts and rights of homestead and exemption.

81 U. B. WILKINSON. [L. S.]

Sworn to and subscribed before me this December 13th, 1883.

JOHN ERSKINE,
U. S. Judge.

Approved this Dec. 15th, 1883.

JAS. W. LOCKE,
U. S. Judge, Presiding.

I know Uriel B. Wilkinson personally, and I am satisfied with the statements made in his accompanying affidavit. In my opinion, the foregoing bond is amply sufficient and — approve the same, so far as it is competent for the judge of this district to do so.

This Dec. 13th, 1883.

H. K. McKAY,
U. S. Judge.

Endorsements: Filed in clerk's office Dec. 15th, 1883. Marion Erwin, deputy clerk C. C.

Testimony Offered in Evidence on Part of Complainants.

Deposition of William C. Riddle, Washington county, Ga., witness on part of complainants.

UNITED STATES OF AMERICA,
Northern District of Georgia, E. Division:

In the 5th Circuit Court of the United States for the Southern District of Georgia.

To B. F. Rawlings, P. R. Taliaferro, and Mark Newman, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any
82 two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Seney Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is defendant, as well on the part of the said plaintiffs or either of them, and it is required of you (or any two or more of you) that on certain days and certain places by you to be appointed for that purpose you do cause the said Wm. C. Riddle, witness on the part of the plaintiffs, to come before you, and then and there examine him upon the said interrogatories on his corporal oath, first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such his examination and reduce it into writing; and when you shall have so taken it you are to send the same to the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up, and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or wit-

nesses, do severally take the oath first specified in this schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or to be present at such examination, severally take the oath last specified in the said schedule
83 annexed; and full power and authority also is given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this seventeenth (17) day of October, in the year of our Lord one thousand eight hundred and eighty-two, and the one hundred and seventh year of American Independence.

[Seal of U. S. Circuit Court, Georgia.]

WM. M. HEYWARD,
Deputy Clerk.

SCHEDULE.

The Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witness, or any of them, to be taken by you and the other commissioners in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.
P. R. TALIAFERRO.

Subscribed and sworn to before me this 30th day of October, A. D. 1882.

[SEAL.]

A. M. MAYO,
Clerk Sup'r Court, W. C.

The Clerk's Oath.

You shall truly, faithfully, and without partiality to any or
84 either of the parties in this cause take and write down, transscribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them named in the commission hereto annexed, so far

forth as you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you, or whereto you shall have recourse or be in anywise privy, until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.

Subscribed and sworn to before me this 30th day of October, A. D. 1882.

[SEAL.] A. M. MAYO,
Clerk Sup'r Court, W. C.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia, E. division. Seney Ann S. Riddle *et al. versus* B. J. Wilson. Commission to examine witnesses on the part of the plaintiffs for the examination of Wm. C. Riddle. Washington Co., Ga. O. H. Rogers, E. S. Langmede, H. D. D. Twiggs, plaintiffs' att'ys.

Ejectment.

In the 5th Circuit Court of the United States for the Southern Division of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogatories to be exhibited and propounded to Wm. C. Riddle, a material witness on the part of the plaintiffs, and who
85 resides in the county of Washington and said State of Georgia.

1st Int'y. What is your name, age, and occupation, and where do you reside?

2nd Int'y. Do you know the parties, plaintiffs and defendant, in the title of these interrogatories named or either or which of them, and how long have you known them? State whether or not you are related to any of them and how related.

3rd Int'y. Do you or not know the two tracts of land lying on Williamson swamp, in Washington county, known as the "Brantley Mill" and "Brown" tracts? If you answer that you do know said two tracts of land, state how long you have known them. State, if you know, who was in possession or exercising acts of ownership over said land on the 23rd day of April, 1853, and how long the party had been in possession of it. Does it or not come within your knowledge that a deed of conveyance was made of said land, embracing said two tracts, on the 23rd day of April, 1853? If you state that it does come within your knowledge that such a deed was made, state who made it, to whom it was made, and who were the subscribing witnesses before whom it was executed; and state whether or not the two tracts of land in litigation between plaintiffs and defendant are embraced in and covered by said deed. State, if

you know, who has been in possession of said land since the 23rd day of April, 1853, and who is in possession now. How long has the party now in possession been in possession? How much rent is said land worth per annum?

Int'y 4th. If you state in answer to the 3d int'y that the
86 defendant, B. J. Wilson, is in possession of said land, state fully and particularly how he became in possession. If you state that his possession is based upon the foreclosure of a mortgage executed by you to him, state whether or not there was any conversation between you and him, the said Wilson, before said mortgage was executed, in relation to the title of said land. If you say you had any such conversation state fully and particularly what was said by both and each of you.

Int'y 5th. Do you or not know any other matter or thing touching the matters in question that will tend to the benefit or advantage of the plaintiffs? If so, declare the same fully and at large as if particularly interrogated thereto.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TWIGGS,
Pl'ffs' Att'ys.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia. November term, 1882. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment and for mesne profits. Interrogatories for Wm. C. Riddle. O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, pl'ffs' att'ys.

Defendant objects to all foregoing direct interrogatories as leading, illegal, irrelevant, and propounds the following cross-interrogations:

1st X Int'y. Who is the husband of Mary Thomas, one of the plaintiffs? If you say Simon S. Thomas is her present husband state when they married. Did they marry before or after the 1st day of January, 1865?

2nd X Int'y. When was the plaintiff, Isabella Cheatham, married to her present husband, Dr. A. T. Cheatham, before or after 1st Jan'y, 1865?

87 3rd X Int'y. Is not the plaintiff, Mrs. Seney Ann Riddle, your wife? When were you married?

4th X Int'y. Give the exact ages of Miss Julia L. Riddle and William H. Riddle, Jr.?

5th X Int'y. Who was the husband of Martha M. Edwards? When did they marry? When did her husband die? When did she die? Were the plaintiffs, Lula Edwards & Sallie C. Gilyard, the only children of said marriage?

6th X Int'y. When did Louisa I. Newsome and her present husband, N. J. Newsome, marry?

7th X Int'y. If in answer to the 3d direct interrogatory you say that you know the two tracts of land lying on Williamson swamp, in Washington county, known as the "Brantley Mill" and "Brown" tracts, state whether or not they were included in the mortgage

given by you to U. B. Wilkinson and B. J. Wilson, partners under the firm name of B. J. Wilson & Co., of date 5th May, 1870, on "all that plantation, tract, or parcel of land situated in the county of Washington and State of Georgia, containing ten thousand acres, and known and distinguished as your home place, and being bounded by lands of Dr. Parsons on the west, by lands of parties known as Maxwell, Hunter, and W. W. Gainer on the north, on the east by lands of B. A. Mayo, and on the south by lands known as the Erwin place, the Central railroad striking this tract at the 130 mile-post and running through it a distance of four miles.

8th X Int'y. If in answer to the 4th direct interrogatory you say that the defendant, B. J. Wilson, is in possession of the land sued for under his purchase thereof at sheriff's sale under and by virtue of a *fi. fa.* from the superior court of said county in favor of B. J. Wilson & Co. *vs.* Wm. C. Riddle, does not the land in dispute
88 form a part of and is it not embraced in the levy under said *fi. fa.*, said levy being in these words, to wit: "Levied the within *fi. fa.* on all that parcel of land, containing ten thousand acres, in Williamson swamp and Central R. road, adjoining lands of B. A. Mayo, Henderson, William Gainer, Maxwell, Tanner, Wm. Thigpen, P. R. Taliaferro, Raiford Hartley, E. Clark, James M. Minar, and others, embracing, among other lands, the following: The Home place, part of Erwin lands, Travers & Hartley place, & ——, levied on as the property of Wm. C. Riddle to satisfy one superior court *fi. fa.* and one mortgage *fi. fa.* in favor of B. J. Wilson & Co. *vs.* W. C. Riddle, Aug. 7th, 1876, (signed) Reuben Mayo, sh'r'ff W. C.?

9th X Int'y. When said land embraced in said levy was advertized for sale or when said levy was made, did not plaintiff, Mrs. Seney Ann Riddle, interpose a claim for herself and plaintiffs to a part of the land so levied upon, to wit, three thousand acres, more or less, known and distinguished as the following places: Daniel's, Shelton, Harman, and Home or Lee places, bounded as follows: On the north by waters of Williamson swamp, C. R. road, & Francis, on the east by said Francis, Davis, and mountain lands and waters of Mineral Branch, and on the south by Anderson Riddle's large survey of 1,415 acres, lying on the Savannah road, & by Ball's Ferry roads, and on the west by the Snow Hill place, formerly belonging to R. & N. B. Whitfield, & Brantley Mill place, lying in the boundaries of said levy?

10th X Int'y. Did not all of plaintiff's children and grandchildren know of Mrs. Riddle's interposing the claim which
89 she put into said 3,000-acre tract, and did not they approve thereof?

11th X Int'y. Were you not present at the sheriff's sale of the other lands embraced in said levy?

12th X Int'y. Were not Dr. A. T. Cheatham, husband of plaintiff, Isabella Cheatham; Simon S. Thomas, husband of plaintiff, Mary Thomas; N. J. Newsome, husband of Louisa Newsome; Anderson M. Riddle, John P. Riddle, James M. Minar, husband of plaintiff, Annie E. Minar; Julia S. Riddle, and Wm. H. Riddle, Jr., present

at said sheriff's sale? Were any of them present; if so, which of them?

13 — Int'y. In said claim case standing in the claim docket of Washington superior court, as follows: "No. 9, B. J. Wilson & Co. *vs.* Wm. C. Riddle, *fi. fa.*, levy and claim by Seney Ann Riddle"— were you not sworn as a witness for the claimant therein?

14 X Int'y. On said trial did you not swear as follows about the conversation between you and defendant, B. J. Wilson, before said mortgage was executed, in relation to the title to the lands embraced in said mortgage, to wit: "Question. Did you ever have a conversation with Mr. Wilson in Savannah, with reference to this trust estate, before this mortgage was made? Answer. I did. He spoke about wanting papers when I wanted to get supplies, & I agreed to mortgage 8,000 acres of land, and I said there was a trust deed on 3,000 acres, but the papers were destroyed & I didn't expect they would be established. He said that would make no difference; he would settle that up; it should not bother me. He said he would
90 settle it up & there should be no trouble. That was before the 1st mortgage was given—before this mortgage. That took place in Sav'h. X ex'n: Question. Was any one present at this conversation except you & Wilson? Answer. No, sir; it occurred in Sav'h, in his office. I think it was in 1867. The conversation took place 3 years before this mortgage was made. I said to him that on the land there was a trust deed. I was giving him some other papers at the time." Is not the foregoing what you swore to about said conversation on said trial?

JAMES K. HINES,
Att'y for Def't.

Endorsements on above: In the 5th circuit court of the United States for the southern district of Georgia. November term, 1882. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment. Interrogatories for W. C. Riddle. Filed Oct. 16, 1882. W. M. Heyward, dep. clerk. O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, pl'ffs' att'ys. Due and legal service of these interrogatories *are* acknowledged. Copy filing & notice waived. Def't nominates B. F. Rawlings as his commissioner. Let commission issue 13 Oct., 1882. James K. Hines, att'y for d'f't. Plaintiffs nominate P. R. Taliaferro & Mark Newman as their commissioners. O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, pl'ffs' att'ys.

Ejectment.

In the Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Examination and depositions of witnesses produced, sworn, and examined by the undersigned commissioners issuing out
91 of the honorable circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Sandersville, Washington county, Georgia, on this 30th day of October, 1882.

WILLIAM C. RIDDLE, aged 65 years, being duly sworn, answers and deposes as follows:

1. To the first direct interrogatory the witness, answering, says: My name is William C. Riddle; aged 65 years; a farmer in Washington county, Ga.

2. To the second direct interrogatory witness, answering, says: I know parties plaintiffs and defendants; have known Seney Ann Riddle ever since I can recollect; her children are my children. I am the husband of Seney Ann Riddle. I have known B. J. Wilson since 1866.

3. To the third direct interrogatory witness, answering, says: I know the two tracts of land known as the Brantley Mill and Brown tracts. I have known them since I was a little boy. I was in possession and exercised acts of ownership of said tracts of land on the 23d of April, 1853. I was in possession of the Brantley Mill tract since 1848 or 1849 and of the Brown tract since 1851 & 1852. I know that a deed of conveyance was made to said land on the 23d of April, 1853. I made it to my wife, Seney Ann Riddle, and children. Ira Walden, Esq., and Franklin Tanner were the subscribing witnesses. The two tracts of land in litigation are covered by said deed. I was in possession of said land until 1877 since 1853; B. J. Wilson is now and has been in possession since 1877. The rental per annum is worth 1,000 or 1,200 dollars.

4. To the fourth interrogatory witness, answering, says: B. J. Wilson came in possession of said lands as purchaser at
92 public sale under a mortgage *fi. fa.*, said mortgage having been executed by me. In 1866, when Wilson requested me to assist him in raising funds in New York by giving him a mortgage upon lands, I told him that I controlled in all about ten thousand acres, but that there were some old deeds on a part of said lands, upon which he replied that it did not matter, as the giving of the mortgage by me upon said lands was a matter of accom-o-dation to him and would probably be never heard of again, as he wanted it for a present purpose. This mortgage was cancelled in 1868. In 1870 B. J. Wilson sent me by mail a mortgage embracing the same lands for signature, though I did not know at the time how much I owed him, as he was to furnish me an itemized state-

ment of my account, and considered this mortgage as the former one—merely an accom-odation—no settlement having been had between us at that time.

5th. To the fifth direct interrogatory witness, answering, says: On the day of sale of said lands by the sheriff at the court-house door of Sandersville, John N. Gilmore, Esq., att'y for Mrs. Seney Ann Riddle, stated before the commencement of the sale that exclusive of the 3,000 acres of land claimed by Mrs. Riddle there are other claims on the lands embraced in said mortgage held by Mrs. Riddle and children.

X 1. To the first cross-interrogatory witness, answering, says: Simon S. Thomas is the husband of Mary Thomas. They
93 were married before the first of January, 1865.

X 2. To the second cross-interrogatory witness, answering, says: Isabella Cheatham was married before 1865.

X 3. To the third cross-interrogatory witness, answering, says: The plaintiff, Mrs. Seney Ann Riddle, is my wife, and we were married on 21st of May, 1840.

X 4. To the fourth cross-interrogatory witness, answering, says: Miss Julia F. Riddle, who died recently, would have been 25 in February next. Wm. H. Riddle is about 22 years.

X 5. To the fifth cross-interrogatory witness, answering, says: Col. A. C. Edwards was the husband of Martha M. Edwards. I don't remember when they — married, though it was before the war; she died about 1863, and he soon after the war had closed. Lula Edwards and Sallie C. Gilyard are their only children.

X 6. To the sixth cross-interrogatory witness, answering, says: I don't know; I can't recollect when N. J. Newsome married Louiza, my daughter; I think about 1867 or 1868.

X 7. To the seventh cross-interrogatory witness, answering, says that the Brantley Mill tract and Brown tract were embraced in the ten-thousand-acre mortgage given to Wilkinson & Wilson in May, 1870, or B. J. Wilson & Co.

X 8. To the eight- cross-interrogatory witness, answering, says: The land in dispute is embraced in Sheriff Mayo's levy of the *fi. fa.* in favor of B. J. Wilson & Co. *vs.* Wm. C. Riddle.

X 9. To the ninth cross-interrogatory witness, answering, says that the claim interposed by Mrs. Seney Ann Riddle, for herself and plaintiffs, for 3,000 acres of the land levied on were the lands enumerated in said 9th X interrogatory.

X 10. To the tenth cross-interrogatory witness, answering,
94 says: I can't tell whether our children and grandchildren knew of Mrs. Riddle's claim of 3,000 acres, nor do I know whether they approved of it or not.

X 11. To the eleventh cross-interrogatory witness, answering, says: I was present at the sheriff's sale of the lands embraced in said levy and heard the statement made by J. N. Gilmore to the effect that Mrs. Seney Ann Riddle had other claims besides the 3,000 acres claimed by her in said lands.

X 12. To the twelfth cross-interrogatory witness, answering, says: I have no recollection of any of the persons mentioned in said inter-

rogatory having been present at the sheriff's sale of said lands though it is likely some of them were present; but I can't tell which of them.

X 13. To the thirteenth cross-interrogatory witness, answering, says that he was sworn as a witness for the claimant in the case stated in said interrogatory.

X 14. To the fourteenth cross-interrogatory witness, answering, says: I have no recollection of having been sworn, at the trial of the claim case, to the matters stated in 14 X interrogatory.

W. C. RIDDLE.

Sworn to and subscribed before us Oct. 30th, 1882.

M. NEWMAN,
P. R. TALIAFERRO,
Commissioners.

Endorsements on envelope: I, M. Newman, one of the commissioners on the within commission, do hereby certify that I have this day deposited in the post office at Sandersville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 25th day of November, 1882. M. Newman, commissioner. Post office, Sandersville, Ga. Received this package from M. Newman, to be transmitted by mail to Savannah, Ga., this 25th day of November, 1882. J. B. Roberts, postmaster. P. R. Taliaferro, commissioner. M. Newman, comm'r. Post office, Savannah, Ga. Received this package by the course of mail this 25th day of Nov., 1882. L. McLaws, P. M. Received by mail and filed this 27 day of Nov., 1882. W. M. Heyward, dep. clerk.

95

Deposition of W. E. Clark, Washington County, Ga., Witness on Part of Complainant.

UNITED STATES OF AMERICA,
Southern District of Georgia, E. Division:

In the 5th Circuit Court of the United States for the Southern District of Georgia.

To B. T. Rawlings, P. R. Taliaferro, and Mark Newman, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Seney Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is def't, as well on the part of the said defendant as on the part of the said plaintiffs or either of them; and it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said W. E. Clark, witness on the part of the plaintiffs, to come before you and

then and there examine him upon the said interrogatories on
96 his corporal oath, first taken before you (or any two or more of you), on the Holy Evangelists, and that you do take such his examination and reduce it into writing; and when you shall have so taken it you are to send the same to the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be *be* examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this seventeenth (17) day of October, in the year of our Lord one thousand eight hundred and eighty-two, and the one hundred
97 and seventh year of American Independence.

[Seal of United States Circuit Court, Georgia.]

WM. M. HEYWARD,
Deputy Clerk.

SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.
P. R. TALIAFERRO.

Subscribed and sworn to before me this 30th day of October, A. D. 1882.

[SEAL.]

A. M. MAYO,
Clerk Superior Court W. C.

The Clerk's Oath.

You shall, truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed, so far forth as
98 you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, or transcribed or engrossed by you or whereto you shall have recourse or be in any wise privy until publication shall pass by rule or order of the said court, so help you God.

M. NEWMAN.

Subscribed to and sworn to before me this 30th day of October, A. D. 1882.

[SEAL.]

A. M. MAYO,
Cl'k Sup'r Court, W. T.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia, E. division. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Commission to examine witnesses on the part of the plaintiffs, for the examination of W. E. Clark, Washington Co., Ga. O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, pl't'ffs' att'ys.

Ejectment.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogatories to be exhibited & propounded to W. E. Clark, a material witness for the plaintiffs, and who resides in the county of Washington and said State of Georgia.

1st Int'y. What is your name, age, and occupation, and where do you reside?

2d Int'y. Do you know the parties—plaintiffs and defendant—in the title of these interrogatories named or either or which of them, and how long have you known them or which of them?

3d Int'y. State whether or not you held any office in January, 1882, and if you say that you did state what office it was.

4th Int'y. Examine the plat hereto attached, and state whether or not you made it. If you say that you did make it state how you come to make it; in what capacity you were acting at the time, &

what lands it represents. State whether or not you made a survey which is represented by said plat. If you say you did make such a survey state whether or not you had any deed before you
99 by which you were governed in making such survey. If you state that you did, state by whom said deed was executed, to whom made, when executed, and what lands it covered and embraced; and if you say that said deed covers and embraces the lands known as the "Brantley Mill" and "Brown" tracts state whether or not said plat is a representative of a correct survey of said two tracts of land covered by said deed.

5th Int'y. How long have you known said two tracts of land? Who was in possession of them when you first knew them? Who was in possession of them from then till the first of January, 1877, and who has been in possession since the first of January, 1877?

6th Int'y. What would be a fair rental per annum for said two tracts of land?

7th Int'y. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the said plaintiffs? If so, declare the same fully and at large, as if you had been particularly interrogated thereto.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TRIGGS,
Pl't'ffs' Att'ys.

Defendant objects to all the foregoing direct interrogatories as leading, illegal, irrelevant, and as not sufficiently explicit, and proposes the following cross-interrogations:

1st Cross-interrogatory. How did you get the bearings and courses set out in the annexed plat? Did you get them from the deed mentioned in the direct interrogatories?

2nd Cross-interrogatory. Did not W. C. Riddle go along and
100 point out the lines, and did you not make said plat from what he said?

3d Cross-interrogatory. How do you know that the deed in question embraces and covers the "Brantley Mill" and "Brown" places? Did you know the "Brantley Mill" place and the "Brown" place in 1853? If you did not state how you know it now. Have you not been told that the deed in question covered them, and is not this your only means of information?

4th Cross-interrogation. Did you have any plats by which to run said lands? If so, what ones? Annex them to your answers to these questions.

JAMES K. HINES,
Att'y for D'f't.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia. November term, 1882. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment & for mesne profits. Interrogatories for W. L. Clark. Due and legal service to these interrogations acknowledged, and copy filing and notice waived. De-

fendant nominates B. T. Rawlings as his commissioner. Let commissions issue 20th Sept., 1882. James K. Hines, att'y for def't. Plaintiffs nominate P. R. Taliaferro and Mark Newman as commissioners. O. H. Rogers, E. S. Langmade, H. D. D. Triggs, plaintiffs' att'ys. Filed October 16th, 1882. W. M. Hayward, dep. clerk. O. H. Rogers, E. S. Langmade, H. D. D. Triggs, plaintiffs' attorn*ies*.

101 *Ejectment.*

In the Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission, issuing out of the honorable the 5th circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Sandersville, Washington county, Ga., on the 30th day of October, 1882.

W. E. CLARK, aged 37 years, being duly sworn, answers and deposes as follows:

1. To the first direct interrogatory the witness, answering, says: My name is W. E. Clark; aged 37 years; a farmer and surveyor, and reside in Washington county, State of Georgia.

2. To the second direct interrogatory witness, answering, says: I have known Mrs. Seney Ann S. Riddle since 1860 and B. J. Wilson since 1876.

3. To the third direct interrogatory the witness, answering,
102 says: I was county surveyor of Washington county in January, 1862.

4. To the fourth direct interrogatory the witness, answering, says: I made the plat hereto attached. I made it, under an order from the superior court of Washington county, as county surveyor of said county. It represents the Brantley Mill tract of 1,000 acres and the Brown tract of 500 acres. I made the survey which said plat represents. When making the survey I had before me a trust deed made by Wm. C. Riddle to Seney Ann Riddle and children. I do not remember the date of the deed, which embraced 1,000 acres of the Brantley Mill tract and 500 acres of the Brown tract. Said plat is a true representation of the said two tracts of land.

5. To the fifth direct interrogatory the witness, answering, says: I have known the Brantley Mill tract since 1865. The Brown tract I only know since 1882, when I surveyed it and — was pointed out to me by Prince, King, and Riddle. When I first knew the Brantley Mill tract it was known as the Riddle land, but don't know who was in possession of it. The Brown tract was in possession of B. J. Wilson when I first knew it. The Brantley Mill tract, as well as the Brown tract, have been in possession of B. J. Wilson since 1st January, 1877, but I did not know that the part known to me now as the Brown tract was in 1877 also known as the Brown tract.

6. In the sixth direct interrogatory witness, answering, says: One thousand dollars a year would be a fair rent for these two tracts of land.

103 7. To the seventh direct interrogatory witness, answering, says: In making the survey of these two tracts of land, guided by the deed hereinbefore mentioned, I came upon the clearly defined ancient corners and landmarks, fully covering the number of acres called for in said deed.

1. To the first cross-interrogatory witness, answering, says: I did not. The deed did not give bearings nor courses.

2. To the second cross-interrogatory witness, answering, says: He was along with the surveying party only a part of the time, but I was not governed by him in making the survey nor plat.

3. To the third cross-interrogatory witness, answering, says: I know the Brantley Mill tract was defined by the east line of a survey made by me of the land embraced in the trust estate of Mrs. Seney Ann Riddle by Anderson Riddle. The balance of the lines around the Brantley Mill tract are artificial and natural. The Brown place was pointed out to me by Prince, King, and Riddle and is bounded by the Ball's Ferry public road, Sandersville Oakey Woods road, artificial lines, and natural lines. I did not know the place in 1833. I have not been told that the deed in question covers these lands, but I know of my own knowledge that these lands are the identical lands here referred to.

4. To the fourth cross-interrogatory witness, answering, says: I have had no plats by which I surveyed said lands.

W. E. CLARK.

Sworn to and subscribed before us Oct. 20th, 1882.

M. NEWMAN,
P. R. TALIAFERRO,
Commissioners.

Endorsement on envelope: I, M. Newman, one of the commissioners on the within commission, do hereby certify that I have
104 this day deposited in the post office at Sandersville the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 25th day of November, 1882. M. Newman, commissioner. Post office, Sandersville, Washington Co. Received this package from M. Newman, to be transmitted by mail to Savannah, Ga., this 25th day of November, 1882. J. B. Roberts, postmaster. P. R. Taliaferro, comm'r. M. Newman, comm'r. Post office, Savannah, Ga. Received this package by the course of mail this 25th day of Nov., 1882. L. McLaws, P. M. J. Received by mail and filed this 27th day of Nov., 1882. M. M. Heyward, dep. clerk.

Deposition of Simon S. Thomas, Witness on Part of Complainant.

UNITED STATES OF AMERICA,
Southern District of Georgia, E. Division:

In the 5th Circuit Court of the United States for the Southern District of Georgia.

To B. T. Rawlings, P. R. Taliaferro, and Mark Newman, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Seney Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is defendant, as well on the part of the said defendant as on the part of the said plaintiffs or either of them; and it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said
Simon S. Thomas, witness on the part of the plaintiffs, to
105 come before you, and then and there examine him upon the
said interrogatories on his corporal oath, first taken before you (or any two or more of you) on the Holy Evangelists; and that you do take such his examination and reduce it into writing, and when you shall have so taken it you are to send the same to the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you) distinctly and plainly set, together with the said interrogatories and this writ; and further that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the schedule annexed, and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelist.

Witness the Honorable Morrison R. Waite, Chief Justice of the
Supreme Court of the United States, at the city of Savannah,
106 this seventeenth (17) day of October, in the year of our Lord
one thousand eight hundred and eighty-two, and the one hundred and seventh year of American Independence.

[Seal of U. S. Circuit Court, Georgia.]

WM. M. HEYWARD, *Dep. Cl'k.*

SCHEDULE.

The Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.
P. R. TALIAFERRO.

Subscribed and sworn to before me this 7th day of November, A. D. 1882.

[SEAL.]

A. M. MAYO,
Clerk Sup'r Court, W. C.

The Clerk's Oath.

You shall, truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of
107 them named in the commission hereunto annexed, so far forth as you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you or whereto you shall have recourse or be in anywise privy until publication shall pass by rule or order of the said court, so help you God.

M. NEWMAN.

Subscribed and sworn to before me this 7th day of November, A. D. 1882.

A. M. MAYO, [SEAL.]
Clerk Sup. C't W. C.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia, E. division. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Commission to examine witnesses on the part of the plaintiffs for the examination of Simon S. Thomas, Washington Co., Ga. O. H. Rogers, E. S. Langmade, & H. D. D. Twiggs, plaintiffs' att'ys.

Ejectment.

In the Fifth Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogatories to be exhibited and propounded to Simon S. Thomas, a material witness on the part of the plaintiffs and who resides in the county of Washington and said State of Georgia.

1st Int'y. What is your name, age, and occupation, and where do you reside?

108 2d Int'y. Do you know the parties plaintiff and defendant in the title of these interrogatories named or either or which of them, and how long have you known them or either or which of them?

3d Int'y. Did you or not ever have any conversation with B. J. Wilson, in the city of Sandersville, in the office of Col. R. S. Waithen, in relation to a trust deed from W. C. Riddle to himself as trustee for his wife, Seney Ann S. Riddle, and their children? And, if you state that you did have such conversation, state fully what was said on that subject by B. J. Wilson.

4th Int'y. If, in answer to the 3rd interrogatory, you say that B. J. Wilson said in your presence that W. C. Riddle had told him at the time of giving him (said Wilson) the mortgage upon which the *fi. fa.* was obtained that sold the land now in dispute that he (said Riddle) had given said land in trust to his wife and children, and that he had deeded it to them, state fully what Wilson said in regard to the conversation that he and Riddle had at the time said mortgage was given in relation to the deed being lost.

5th Int'y. Do you or not know the two tracts of land, now in possession of B. J. Wilson, in Washington county, Georgia, known as the "Brantley Mill" place and the "Brown" place? And, if you say that you do, state how long you have known them, who

109 has been in possession during that time, and when the possession changed.

6th Int'y. Do you or not know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the said plaintiffs? If so, declare the same fully and at large as if you had been particularly interrogated thereto.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TWIGGS,
Pl'ffs' Att'ys.

1 X Int'y. In the claim case standing as case No. 9 on the claim docket of Washington superior court, March term, 1877, between "B. J. Wilson *vs.* Wm. C. Riddle, *fi. fa.*, levy and claim by Seney Ann S. Riddle," were you not summoned at the September term, 1877, of said court as a witness for the claimant in said case?

2nd — Int'y. In the said case did you not swear as follows touching the conversation which you say you had with the defendant, B. J. Wilson, about the lands of W. C. Riddle, to wit:

"Question. Did you ever have a conversation with B. J. Wilson in reference to this trust land?

"Answer. Yes, sir.

"Q. When?

"A. In Col. Warthen's office. There was no one present but Col. Wilson and myself; that was at September term, 1876, of this court; we was talking of this trust deed.

"Q. What did Wilson say about the trust estate?

"Ans. I don't remember that he spoke of a trust deed. He said Riddle had told him there was an old deed that had been de-
110 stroyed, & he didn't think it would ever be established.

"Q. What was he talking about at the time?

"A. He was speaking of the trust deed.

"Q. In that conversation what did Mr. Wilson say to you?

"A. I don't remember that he said further than he said what Riddle said, that there had been an old deed to a portion of this land; that it had been destroyed, and he didn't apprehend any trouble from it; that Riddle said he didn't think that there would ever be trouble."

Say whether or not you swore to the foregoing then and there.

JAMES K. HINES,
Att'y for D'f't.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia. November term, 1882. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment & for mesne profits. Interrogatories for Simon S. Thomas. O. H. Rogers, E. S. Landmade, H. D. D. Twiggs, pl'ffs' att'ys. Due and legal service of these interrogatories acknowledged. Copy filing, notice, &c., waived. Let commission issue. D'f't nominates B. T. Rawlings as his commissioner 13th October, 1882. James K. Hines, att'y for def't. Plaintiffs nominate P. R. Taliaferro & Mark Newman as their commissioners. O. H. Rogers, E. S. Langmade, & H. D. D. Twiggs, pl'ffs' att'ys. Filed Oct. 16th, 1882. W. M. Heyward, dep. clerk.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

111 Examinations and deposition- of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Sandersville on this 7th day of November, 1882.

SIMON S. THOMAS, being duly sworn, answers and deposes as follows:

1. To the first interrogatory the witness, answering, says: Simon S. Thomas; aged 52 years; a farmer, and reside in Jefferson county.

2. To the second interrogatory the witness, answering, says: I know Mrs. Seney Ann Riddle since 1855 and the defendant, B. J. Wilson, since 1866.

3. To the third interrogatory the witness, answering, says: I had a conversation with Col. Wilson in R. S. Warthen's office, in Sandersville, in relation to a claim which Mrs. Riddle had pending in Washington county court as trust property against Wilson & W. C. Riddle. Mr. Wilson remarked during that conversation that Riddle had told him that there was an old deed, but that it would never be brought up.

4. To the fourth interrogatory witness, answering, says: I have stated all that was said to me by Mr. Wilson in my answer to the 3d interrogatory.

5. To the fifth interrogatory witness, answering, says: I know the two tracts of land now in possession of B. J. Wilson, known
112 as the Brantley Mill tract and the Brown place, in Washington county, for over 25 years. They were in possession of W. C. Riddle until dispossessed by the mortgage sale in favor of Wilson.

6. To the sixth interrogatory witness, answering, says: I was with the surveyor when he surveyed the Brantley mill tract after it came in possession of Wilson, and found the old corners and landmarks. I know nothing further to the advantage of plaintiffs.

X 1. To the first cross-interrogatory the witness, answering, says: I was sworn as a witness in the case for claimant at the September term of the superior court of Washington county, 1877.

X 2. To the second cross-interrogatory witness, answering, says: I did not swear exactly as set forth in said interrogatory.

SIMON S. THOMAS.

Sworn to and subscribed before us Nov. 7th, 1882.

M. NEWMAN,
P. R. TALIAFERRO,
Commission-s.

Endorsement on envelope: I, M. Newman, one of the commissioners in the within commission, do hereby certify that I have this day deposited in the post office at Sandersville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 25th day of November, 1382. M. Newman, commissioner. Post office, Sandersville, Ga. Received this package from M. Newman, to be transmitted by mail to Savannah, Ga., this 25th day of No-
113 vember, 1882. J. B. Roberts, postmaster. P. R. Taliaferro, commissioner. M. Newman, commissioner. Post office Savannah, Ga. Received this package by due course of mail this 25 day of Nov., 1882. L. McLaws, P. M. Received by mail and filed this 27 day of Nov'r, 1882. W. M. Heyward, dep. clerk.

Deposition of Wm. J. Henderson, Witness on Part of Complainant.

UNITED STATES OF AMERICA,
Southern District of Georgia, E. Division:

In the 5th Circuit Court of the United States for the Southern District of Georgia.

To B. T. Rawlings, P. R. Taliaferro, and Mark Newman, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by the presents are vested (any two or more of you) with full power and authority diligenly to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Seney Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is defendant, as well on the part of the said defendant as on the part of the said plaintiffs or either of them; and it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said Wm J. Henderson, witness on the part of the plaintiffs, to come before you and then and there examine him
114 upon the said interrogatories on his corporal oath, first taken before you (or any two or more of you), on the Holy Evangelists, and that you do take such his examination and reduce it into writing; and when you shall have so taken it you are to send the same *of* the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining of any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or
115 clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this seventeenth (17) day of October, in the year of our Lord one thousand eight hundred and eighty-two, and the one hundred and seventh year of American Independence.

[Seal of U. S. Circuit Court, Georgia.]

WM. M. HEYWARD,
Dep. Clerk.

SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secresy in the execution of this commission, the contents of all or any of the deposition of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.
P. R. TALIAFERRO.

116 Subscribed and sworn to before me this 30th day of October, A. D. 1882.

A. M. MAYO,
Clerk Superior Court W. C.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia, E. division. Seney Ann S. Riddle *et al. versus* B. J. Wilson. Commission to examine witnesses on the part of the plaintiffs for the examination of Wm. J. Henderson, Washington Co., Geo. O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, pl'ffs' att'ys.

Ejectment.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogations to be exhibited and produced to Wm. J. Henderson, a material witness on the part of the plaintiffs and who resides in the county of Washington and said State of Georgia.

1st Int'y. What is your name, age, and occupation, and where do you reside?

2d Int'y. Do you know the parties plaintiff and defendant in the title of these interrogatories or either or which of them, and how long have you known them or either and which of them?

3d Int'y. Do you or not know the lands in the county of Washington, State of Georgia, now in the possession of B. J. Wilson, known as the "Brantly Mill" and "Brown" tracts? If you say you know said lands, state how long you have known them and who was in possession of them and exercising acts of control over

them from the time you first knew them till the first of Janu-
117 ary, 1877, and who has been in possession and exercising acts of ownership and control over them since the 1st of January, 1877?

4th Int'y. If, in answer to the 3d interrogatory, you answer that B. J. Wilson has been in possession and exercising acts of ownership and control over said lands since 1st of January, 1877, state whether or not you have acted as his agent in the renting and collection of rents of these lands for any portion of that time, and how many and which years it was, and how much rent did said Wilson receive for these two tracts of land for those years.

5th Int'y. What are these lands worth for agricultural purposes or what would be a fair rental per annum? Have you ever rented either of these tracts of land, and how much did you pay and which tract was it?

6th Int'y. Do you or not know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the said plaintiffs? If so, declare the same fully and at large as if you had been particularly interrogated thereto.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TWIGGS,
Pl'ffs' Att'ys.

Endorsements: In the 5th circuit court of the United States for the southern district of Georgia. November term, 1882. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment and for mesne profits. Interrogatories for Wm. J. Henderson. O. H. Rogers, E. S. Langmade,
H. D. D. Twiggs, pl'ffs' att'ys. Due and legal service of these
118 interrogatories acknowledged. Copy filing, notice, &c., waived. D'f't nominates B. T. Rawlings as his commissioner. Let commission issue. James K. Hines, att'y for d'f't. Plaintiffs nominate P. R. Taliaferro & Ma-k Newman as their commissioners. O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, pl'ffs' att'ys. Filed Oct. 16th, 1882. W. M. Heyward, dep. cl'k.

In the District Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission, issuing out of the honorable the district court of the United States for the southern district of Georgia, taken and reduced to writing in Sandersville on the 30th day of October, 1882.

W. J. HENDERSON, aged 39 years, being duly sworn, answers and deposes as follows, to wit:

1. To the first direct interrogatory the witness, answering, says: My name is William J. Henderson; 39 years old; a farmer, and reside 2 miles from Davisboro', in Washington county, Ga.

2. To the second direct interrogatory the witness, answering, says: I have known Mrs. Seney Ann Riddle since 1867 and Mr. B. J. Wilson since 1870.

3. To the third direct interrogatory the witness, answering,
119 says: I know the lands now in possession of B. J. Wilson known as "Brantley Mill" and "Brown" tracts. I have known these lands since 1868. Mr. W. C. Riddle exercised act of ownership over them from that time until 1877, and was in possession of them. B. J. Wilson was in possession and exercised acts of ownership over these lands since the 1st of January, 1877.

4. To the fourth direct interrogatory the witness, answering, says: I acted as agent for B. J. Wilson in renting said tracts of land in 1877, for which he received ten bales of cotton as rent.

5. To the fifth direct interrogatory the witness, answering, says: I consider these lands worth 8 dollars (eight) per acre, and the rental about eighteen bales cotton per acre. I rented the Brown place in 1877 from B. J. Wilson, for which I gave 7 bales cotton rent, and in 1876 I rented the same place of I. M. Minor, and gave 6 bales cotton as rent.

6. To the sixth direct interrogatory the witness, answering, says: In explanation of my testimony as to the value of the rental of said places, I state that in 1877 the Brown place and only a part of the Brantley Mill tract was rented out—not the whole. I know of nothing more that would benefit the plaintiffs.

W. J. HENDERSON.

Sworn to and subscribed before us Oct. 30th, 1882.

M. NEWMAN,
R. P. TALIAFERRO,
Commissioners.

Endorsements on envelope: I, M. Newman, one of the
120 commissioners on the within commission, do hereby certify that I have this day deposited in the post office at Sandersville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Ga. This 25th day of November, 1882. M. Newman, commissioner. P. R. Taliaferro, com'r. (Seal.) M. Newman, com'r. (Seal.) Post office, Sandersville, Ga. Received this package from M. Newman, to be transmitted by mail to Savannah, Ga., this 25th day of November, 1882. J. B. Roberts, postmaster. Post office, Savannah, Ga. Received this package by due course of mail this 25th day of Nov., 1882. L. McLaws, postmaster. Received by mail and filed this 27 day of Nov., 1882. W. M. Heyward, dep. clerk.

Commission to Examine Witnesses.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

In the 5th Circuit Court of the United States for the Eastern Division, Southern District, of Georgia.

To Mark Newman, P. R. Taliaferro, and B. T. Rawlings, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein S. S. Riddle *et al.* are plaintiffs and J. Ben. Wilson *et al.*
121 are defendants, as well on the part of the said defendants as on the part of the said plaintiffs or either of them.

And it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said Ira Walden and E. S. Langmade, witnesses on the part of the pl'ffs, to come before you, and then and there examine them upon the said interrogatories on their corporal oaths first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such their examinations and reduce them into writing, and when you shall have so taken them you are to send the same to the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you) distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid
122 or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Ch'f Justice Supreme Court of the United States, at the city of Savannah, this seventh day of September, in the year of our Lord one thousand eight hundred and eighty-two, and the *one hundred an-* 107th year of American Independence.

[Seal of U. S. Court, Georgia.]

WM. M. HEYWARD,
Dep'ty Clerk.

SCHEDULE.

Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.
B. T. RAWLINGS.
123 P. R. TALIAFERRO.

Subscribed and sworn to before me this 26th day of Sept., A. D. 1882.

[Seal Clerk Superior Court, Washington County, Georgia.]

A. M. MAYO,
Clerk C't, W. C.

The Clerk's Oath.

You shall, truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed, so far forth as you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you or whereto you shall have recourse or be in anywise privy until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.

Subscribed and sworn to before me this 26th day of Sept., A. D. 1882.

[Seal Clerk Superior Court, Washington County, Georgia.]

A. M. MAYO,
Clerk Sup'r C't, W. C.

Deposition of Ira Walden and E. S. Langmade, Witnesses on Part of Complainant.

124 In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al.* *vs.* B. J. WILSON.

Ejectment.

Interrogatories to be administered and propounded to Ira Walden, Esqr., an- E. S. Langmade, Esqr., material witnesses on the part of the plaintiffs, and who reside in the county of Washington and State of Georgia.

Interrogatories for Ira Walden.

1st Interrogatory. What is your name, age, and occupation, and where do you reside?

2d Interrogatory. Do you know the parties plaintiff and defendant in the title of these interrogatories named or either or which of them, and how long have you known them or either and which of them?

3d Int'y. Please examine the deed hereto attached and state whether or not you witnessed the signature thereto of Wm. C. Riddle, and whether or not you signed your name thereto, as justice of the peace as a witness.

4th Int'y. Please state whether or not Franklin Tanner signed said deed as a witness, and if his signature thereto is his genuine signature and handwriting. And is Franklin Tanner living or dead?

5th Int'y. State whether or not you were a justice of the peace on the 23d day of April, 1853, the day that said deed was executed, and if you say that you were, state how long before and since you have occupied said position.

6th Int'y. State whether or not you are now acquainted with the two tracts of land described in said deed, and whether or not you were acquainted with it in April, 1853, when said deed was executed.

7th Int'y. If, in answer to the 6th interrogatory, you
125 state that you were acquainted with said land at the time said deed was made, in the year 1853, state who was in possession and who was exercising acts of ownership over it at that time.

8th Int'y. If, in answer to the 6th interrogatory, you state that you are now acquainted with said land, state who is in possession of it and has been since the first day of January, 1877?

9th Int'y. Do you or not know any other matter or thing touching the matters in question that may tend to the benefit or advantage of said plaintiffs? If so, declare the same fully and at large, as if you had been particularly interrogated thereto.

Interrogatories for E. S. Langmade.

1st Int'y. What is your name, age, and occupation, and where do you reside?

2d Int'y. Do you know the parties plaintiff and defendant in the title of these interrogatories named or either or which of them, and how long have you known them and which of them?

3d Int'y. Please examine the attached deeds and say whether or not it comes within your knowledge that said deed was recorded in the record of deeds of Washington county, Georgia; and if you state that it was so recorded, state how you came to know the fact, and when you first knew of it?

4th Int'y. Do you or not know the two tracts of land discribed in the attached deed? If you say that you do know said land, state how long you have known it, and who was in possession of it
126 and who was exercising acts of ownership over it April, 1853, and how long has he been in possession of it.

5th Int'y. State whether or not you were acquainted with the handwriting of Franklin Tanner in his lifetime. If you state that you were so acquainted, state whether or not his signature as a witness to said deed is his genuine signature and handwriting.

6th Int'y. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the said plaintiffs? If so, declare the same fully and at large, as if you had been particularly interrogated thereto.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TWIGGS,
Attorneys for Plaintiffs.

The defendant objects to all the foregoing interrogatories as leading, illegal, and irrelevant, and especially to the 3d direct interrogatory propounded to the witness, Ira Walden, on the ground that there is higher and better evidence of the fact therein sought to be proven.

Defendant propounds the following cross-interrogatories to the witness, E. S. Langmade, Esq.:

First Cross-interrogatory. Was not the court-house at Sandersville, Washington county, together with all the records in the clerk's office, superior court of said county, burned in November or December, 1864? Were not all the records aud registry of deeds for said county burned in said fire? Were any of the records of deeds
127 which had been recorded previous to date saved? If you say any were not destroyed, please name them.

Second Cross-interrogatory for same witness. Was not the court-house in and for said county, and were not all records, including all records and registry of deeds, in the clerk's office of the superior court for said *court*, destroyed by fire in 1855 or 1856? Was not the record and registry of all deeds previously to said date recorded destroyed by said fire?

McKAY & ABBOTT,
JAMES K. HINES,
Att'y- for Defendant.

In the Circuit Court of the United States for the Eastern Division, Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Examination and deposition- of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Sandersville, Washington county, Georgia, on this 26th day of September, 1882.

1st. To the first interrogatory IRA WALDEN answers: My name is Ira Walden. I am 73 years old; a farmer in Washington county, Georgia.

2d. To the 2d interrogatory he answers: I have been ac-
128 quainted with Seney Ann Riddle, the plaintiff, since 1830. I have known B. J. Wilson several years.

3d. To the 3d interrogatory he answers: I have examined the hereto-attached deed. I witnessed the signature of William C. Riddle. I signed my name thereto as justice of the peace as a witness.

4th. To the 4th interrogatory he answers: Franklin Tanner signed said deed as a witness. His signature is a fac-simili to his general handwriting. Franklin Tanner is dead.

5th. To the 5th interrogatory he answers: I was justice of the peace on the 23d of April, 1853, when this deed was executed. I have been a justice of the peace consecutively from 1841 to 1860.

6th. To the 6th interrogatory he answers: I have known this lands since 1830.

7th. To the 7th interrogatory he answers: William C. Riddle exercised acts of ownership over said lands at the time this deed was made, in 1853.

8th. To the 8th interrogatory he answers: B. J. Wilson went into possession of said land in 1877; somewhere about that time.

9th. To the 9th interrogatory he answers: I know nothing further that will benefit the plaintiff-.

IRA WALDEN.

Sworn to and subscribed to before us, at Sandersville, Ga., this 26th day of September, 1882.

M. NEWMAN,
P. R. TALIAFERRO,
B. T. RAWLINGS,
Commissioners.

129 *Deposition of E. S. Langmade, Witness on Part of Complainant-.*

1st. To the first interrogatory E. S. LANGMADE answers: His name is E. S. Langmade; age, 65 years; occupation, attorney-at-law; resides in Sandersville, Washington county, Georgia.

2d. To the second interrogatory he answers: He knows Mrs. Seney Ann Riddle and most of the other plaintiffs; has been acquainted with Mrs. Seney Ann Riddle for 40 years. The other plaintiffs in this

suit are the children and grandchildren of William C. Riddle and said Seney Ann Riddle; have been acquainted with all the children of Mrs. Riddle from infancy. The grandchildren, the last named in this suit, he is not personally acquainted with; have been acquainted with B. J. Wilson for the last 25 years.

3d. To the third interrogatory he answers that it does come within his knowledge that the attached deed was recorded among the records of deeds in the clerk's office of the superior court of Washington county, Georgia. Witness knows of the record of said deed from the fact that the Brantley Mill tract of land originally contained from 1,200 to 1,400 acres. In 1852 witness purchased of William C. Riddle about one-half of said tract, Riddle retaining the portion now in dispute. In the fall of the year 1853 witness applied to William C. Riddle to sell him (witness) the balance of the Brantley Mill
130 tract; was then informed by said Riddle that he had made a trust deed to said land to his wife and children and could not sell. Witness, a short time thereafter, examined the record of deeds and found this deed on record in the clerk's office of the superior court among the record of deeds; read it over for the purpose of ascertaining whether or not a decree could be had in chancery authorizing the trustee to sell said land.

4th. To the fourth interrogatory he answers that he does know the two tracts of land described in said attached deed; have known said lands over forty years. William C. Riddle, husband of plaintiff, Seney Ann Riddle, was in possession, exercising acts of ownership over said land, in 1848, and continued in possession, cultivating and exercising acts of ownership over said land, from that date until about the 1st of January, 1877, when the defendant Wilson went into possession, and still holds possession, of said land. The said William C. Riddle was in possession, cultivating and exercising other acts of ownership over said land, in the month of April, 1853.

5th. To the fifth interrogatory witness answers that he was well acquainted with the handwriting of Franklin Tanner in his lifetime, from having seen him write and having frequently seen letters, receipts, and notes written by him. Witness further says that he has examined the signature of Franklin Tanner signed as a wit-
131 ness to the attached deed, and has no doubt but said signature is in the genuine handwriting of Franklin Tanner.

6th. To the sixth interrogatory he answers that he knows nothing more that will benefit the plaintiffs, except the fact that William C. Riddle, the trustee, refused to bring this suit for the recovery of said land; wherefore suit was brought by his *cestui que trust*.

1st & 2d Cross-int. To the first cross-interrogatory witness answers, and also to the second he answers, that the court-house of Sandersville, in Washington county, Georgia, was burned, with all the records, including registry of deeds, in November, 1864; also the court-house was destroyed by fire in said town and county, with all the registry and record of deeds, on the 24th of March, 1855; none of the records of deeds in either of these fires were saved.

E. S. LANGMADE.

Sworn to and subscribed before us, at Sandersville, Ga., this 26th of September, 1882.

M. NEWMAN,
P. R. TALIAFERRO,
B. T. RAWLINGS,
Commissioners.

Trust Deed.

GEORGIA, *Washington County:*

This indenture, made and entered into this twenty-third day of April, A. D. eighteen hundred and fifty-three, between William C. Riddle, of said State and county, of one part, and
132 his wife, Seany Ann S. Riddle, and her children, of same place, of the other part, witnesseth: That the said C. Riddle, for and in consideration of five rs cash in hand paid by the said Seany S. Riddle at and before the sealing and of these presence, the receipt whereof by acknowledged, said Wm. C. Riddle, nd in consideration of the natural love and n he bears to his said wife, Seany Ann S., and ldren of him, the said Wm. C. Riddle, and n S., hath bargained, sold, and granted and con- by these presence doth grant, bargain, and sell and convey, unto himself, the said Wm. C. Riddle, for the use, benefit, and advantage in trust for the said Seany Ann S. and the children of the said William C. Riddle and Seany Ann S. for and during the natural life of the said Seany Ann S., and on her decease to such child or children as she may leave in life, all of the following-described property, to wit: One tract or parcel of land in said county and State, known as Brantly Mill place, containing one thousand acres, adjoining lands of Snow Hill on south, Hunt and Langmade's lands on west, Black's place on north, and myself as trustee on the east; also one tract, known as Brown place, in said county and State, containing five hundred acres, and bounded on north by Ball's Ferry road and Louisville and Sandersville road, on east by Sheppard's place, on south by Williamson swamp, on west by (torn) place; to have and to hold the above-described (torn) ty to him, the said Wm. C. Riddle, in trust (torn) said Seany Ann S. and her children, as above specified, (torn) forever, free from the debts, liabilities,
133 and contracts of him, the said Wm. C. Riddle, and all other persons whatsoever, together with all and singular the rights, members, and appurtanances thereof whatsoever to the said tracts of land being, belonging, on in anywise appertaining, and the remainders, reversions, rents, issues, and rights thereof and every part thereof.

Torn off.

In witness whereof the said Wm. C. Riddle has hereto set his hand and affixed his seal the day and year above written.

WM. C. RIDDLE. [L. S.]

Signed, sealed, and delivered in presence of—
IRA WALDEN, *J. P.*
FRANKLIN TANNER.

Endorsements on deed: Filed in office under order Oct. 4th, 1881. A. M. Mayo, clerk. Georgia, Washington county. Recorded in the clerk's office of the superior court of said county, Book F of deeds, folio 213, Oct. 5th, 1881. A. M. Mayo, clerk. Georgia. Registered in the clerk's office of Washington county in Book Z, page 404, this 26th May, 1853. L. A. Jernigan, cl'k.

134 Endorsements on depositions: In the 5th circuit court of the United States for the southern district of Georgia. November term, 1882. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment, &c. Interrogations for Ira Walden & E. S. Langmade. Filed Sept. 7, 1882. W. M. Heyward, dep. cl'k. O. H. Rogers, E. S. Langmade, H. D. D. Twiggs, att'ys for pl'ffs. Due & legal service of the within sets of interrogatories acknowledged. Copies filing and notice of filing waived, and let commission issue instanter. Defendant nominates B. T. Rawlings as his commissioner. 2nd Sept., 1882. McKay & Abbot, James K. Hines, att'ys for d'f't.

Endorsements on envelope: I, M. Newman, one of the commissioners on the within commission, do hereby certify that I have this day deposited in the post office at Sandersville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 26th day of September, 1882. M. Newman, commissioner. Post office, Savannah, Ga. Received this package by due course of mail this 27 day of Sept., 1882. L. McLaws, P. M., per J. M. Newman, comm'r. (Seal.) B. T. Rawlings, comm'r. (Seal.) P. R. Taliaferro, comm'r. (Seal.) Received by mail and filed this 27 day of Sept., 1882. W. M. Heyward, dep. clerk. Opened — counsel 17 Nov., 188–. Geo. A. Mercer, of counsel for pl'ffs.

135 *Commission to Examine Witnesses.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

In the Circuit Court of the United States for the Southern District of Georgia.

Deposition of Mrs. Seney Ann S. Riddle, witness on part of complainant-.

To M. Newman, P. R. Taliaferro, B. T. Rawlings, & W. H. Parsons, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Seney Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is defendant, as well on the part of the said defendant as on the part

of the said plaintiffs or either of them; and it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said Mrs. Seney Ann S. Riddle, witness on the part of the plaintiffs, to come before you and then and there examine her upon the said interrogatories on the corporal oath, first taken before you (or any two or more of you), on the Holy Evangelists, and that you do take such her examination and reduce it into writing; and when you shall have so taken it you are to send the same to the clerk of the circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

136

Witness the Honorable Morrison R. Waite, Ch'f Justice Supreme Court of the United States, at the city of Savannah, this third day of March, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and seventh year of American Independence.

[Seal of U. S. Circuit Court, Georgia.]

WM. M. HEYWARD,
Deputy Clerk.

SCHEDULE.

The Commissioners' Oath.

137 You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

W. H. PARSONS.
M. NEWMAN.

Subscribed and sworn to before me this 27th day of March, A. D. 1883.

[Seal Clerk Superior Court, Washington County, Georgia.]

A. M. MAYO,
Clerk S. C., W. C.

The Clerk's Oath.

You shall, truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed, so far forth as
138 you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you or whereto you shall have recourse or be in anywise privy until publication shall pass by rule or order of the said court, so help you God.

Ejectment.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogatories to be exhibited and propounded to Mrs. Seney Ann S. Riddle, one of the plaintiffs and a material witness on the part of the plaintiffs in the above-stated case, and who resides in the county of Washington and State of Georgia.

Int'y 1st. What is your name, age, and where do you reside?

Int'y 2d. Do you know the parties, plaintiffs and defendant, in the title of these interrogatories named?

Int'y 3d. Did you or not know of the sale of Wm. C. Riddle's land, by the sheriff of said county, under a mortgage *fi. fa.* in favor of B. J. Wilson? If you answer that you did know of such sale, please state whether or not you interposed a claim to any portion of said land and how much. Did that claim include the 1,500
139 acres now in dispute? If you state that it did not, please state fully and particularly why you did not claim the land now in dispute at the time you put in your claim to the 3,000 acres.

Int'y 4th. If you state, in answer to the 3d int'y, that the trust deed to the 1,500 acres of land in dispute was lost at the time you interposed your claim to the 3,000 acres, state whether or not you made any search or inquiry for said deed, and whether or not you found it. Where was the deed found before or since the sale of the land under the mortgage *fi. fa.?*

Int'y 5th. Was there any notice given at the time W. C. Riddle's land was sold, under B. J. Wilson's mortgage *fi. fa.* of your claim to said land under a trust deed?

Int'y 6th. Do you or not know any other matter or thing touching the matters in question that will tend to the benefit or advantage of the plaintiffs? If so, declare the same fully and at large as if particularly interrogated thereto.

GEO. A. MERCER,
H. D. D. TWIGGS,
E. S. LANGMADE,
O. H. ROGERS,
Pl't'ffs' Atty's.

Endorsements on interrogatories: In the 5th circuit court of the United States, southern district of Georgia. April term, 1883. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment. Interrogatories for Mrs. Seney Ann S. Riddle. Mercer, Twiggs, Langmade, Rogers, pl'ffs' att'ys. Due & legal service of these interroga-
140 tories acknowledged. Copy. Filing time and notice of filing waived. Let commission issue. D'f't nominates Rawlings & W. H. Parsons as his commissioners 26th Feb. 1883. J. K. Hines, att'y for d'f't. The plaintiffs nominate M. Newman & P. R. Taliaferro as their commissioners Feb. 28th, 1883. Geo. A. Mercer, H. D. D. Twiggs, E. S. Langmade, O. H. Rogers, att'ys for p't'ffs. Filed March 3d, 1883. W. M. Heyward, dep. clerk.

Answers to Interrogatories.

In the Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Ejectment.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission, issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing at the residence of Wm. C. Riddle, in Washington county, on this 27th day of March, 1883.

Mrs. SENEY ANN RIDDLE, aged 63 years, being duly sworn, answers and deposes as follows, to wit:

1. To the first direct interrogatory the witness, answering, saith: Seney Ann Riddle; aged 63 years; in Washington county, Georgia.

2. To the second direct interrogatory the witness, answering, saith: I know the parties, plaintiffs and defendant, in the title of these interrogatories named.

3. To the third direct interrogatory the witness, answering,
141 saith: I know of the sale of Wm. C. Riddle's land by the sheriff of said county, but don't know by what process it was sold. I did interpose a claim for 3,000 acres of said land sold. That claim of 3,000 acres did not include the 1,500 acres now in dispute. I did not know that Mr. Wilson's mortgage included that 1,500 acres, too; in fact I did not know that Mr. Riddle had given any

mortgage to Mr. Wilson. I always knew that there was a trust deed for me and my children to these 1,500 acres of land ever since it was made. When these legal troubles came upon us I and my children began to look up all the old papers to find the trust deeds, as no official records could be found, having been destroyed by the fire in the Sandersville court-house.

4. To the fourth direct interrogatory the witness, answering, saith: As I have said in my answer to the 3d direct interrogatory, we did search and inquire for that trust deed, and I found it after a long time, having already given it up as lost with other papers destroyed by the army when they came through here. That deed was found since the sale of the land.

5. To the fifth direct interrogatory the witness, answering, saith: I do not know of any notice given at the time of the sale of my claim to these 1,500 acres, but I heard of a notice having been given of my claim to the 3,000 acres, which I recovered.

6. To the sixth direct interrogatory the witness, answering,
142 saith: I know of nothing else touching the matter in question for the benefit or advantage of the plaintiffs.

SEANY ANN S. RIDDLE.

Sworn to and subscribed before us this 27th of March, 1883.

W. H. PARSONS, *Comm'r.*
M. NEWMAN, *Comm'r.*

Endorsements: In the circuit court of the United States for the southern district of Georgia. Seny Ann S. Riddle *et al. versus* B. J. Wilson. Commission to examine witnesses on part of plaintiffs for the examination of Seny Ann S. Riddle.

Endorsements on envelope: I, M. Newman, one of the commissioners on the within commission, do hereby certify that I have this day deposited in the post office at Sandersville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 9th day of April, 1883. M. Newman, commissioner. W. H. Parsons, comm'r, on seal. M. Newman, comm'r, on seal. Post office, Sandersville, Ga. Received this package from M. Newman, to be transmitted by mail to Savannah, Ga., this 9th day of April, 1883. J. B. Roberts, postmaster. Post office, Savannah, Ga. Received this package by due course of mail this 10th day of April, 1883. L. McLaws, P. M. Received by mail and filed this 10th day of April, 1883. H. H. King.

Upon application of counsel for plaintiffs, ordered that the within deposition be opened in open court this Nov. 28th, 1883.

JAMES W. LOCKE, *Judge.*

143 *Commission to Examine Witnesses.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

In the Circuit Court of the United States for the Southern District of Georgia.

Deposition of Green Riddle, witness on part of complainant.

To M. Newman, P. R. Taliaferro, B. T. Rawlings, & W. H. Parsons, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause, pending and to be tried in the said court, wherein Seny Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is defendant, as well on part of the said defendant as on the part of the said plaintiffs or either of them; and it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said Green Riddle, witness on the part of the plaintiffs, to come before you, and then and there examine him upon the said interrogatories on his corporal oath first taken before you or any two or more of you on the Holy Evangelists, and that you do take such his examination and reduce it into writing, and when you shall have so taken
144 it you are to send the same to the clerk of the circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you) distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Ch'f Justice of the Supreme Court of the United States, at the city of Savannah, this third day of March, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and seventh year of American Independence.

[Seal of U. S. District Court, Georgia.]

WM. M. HEYWARD,
Deputy Clerk.

145 SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

W. H. PARSONS.
M. NEWMAN.

Subscribed and sworn to before me this 27th day of March, A. D. 1883.

[Seal Clerk Superior Court, Washington County, Georgia.]

A. M. MAYO,
Clerk S. C., W. C.

Ejectment.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogatories to be exhibited and propounded to Green Riddle, a material witness on the part of the plaintiffs, and who resides in the county of Washington and said State of Georgia.

1st Int'y. What is your name, age, and occupation, and
146 where do you reside?

2nd Int'y. Do you know the parties, plaintiffs and defendant, in the title of these interrogatories named or either and which of them?

3d Int'y. Do you or not know the two tracts of land now in litigation between Mrs. Seny Ann S. Riddle and B. J. Wilson; and, if so, what names, if any, they are known by and where they lie?

4th Int'y. State whether or not you ever heard the defendant, B. J. Wilson, in conversation with any one in relation to the lands in question; state exactly what said Wilson said; state whether or not there was anything said about the lands now sued for being encumbered by trust deeds to Mrs. Seny Ann S. Riddle and her children; and, if you say there was anything said, state fully and particularly what was said.

5th Int'y. Do you or not know any other matter or thing touching the matter in question that will tend to the benefit or advantage of the plaintiffs? If so, declare the same fully and at large, as if particularly interrogated thereto.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TWIGGS,
GEO. A. MERCER,
Pl'ffs' Att'ys.

Defendant objects to the 4th direct interrogatory on the ground that it is not sufficiently explicit to put him upon notice of the nature of the testimony sought, and propounds the following cross-interrogatories:

147 1st X Int'y. Don't you live on the lands of the plaintiffs?

2nd X Int'y. How long have you lived there?

3d X Int'y. Are you white or colored?

4th X Int'y. If, in answer to the 4th int'y, you say you ever heard the defendant, B. J. Wilson, in conversation with any one in relation to the land in dispute, state with whom he had the conversation.

5th X Int'y. When did defendant say that he had first heard of the trust deeds?

6th X Int'y. Did you ever hear defendant, B. J. Wilson, say that he had ever heard of any trust deeds to this land in dispute? If so, state exactly what he said.

LANIER & ANDERSON,
L. B. BLECKLEY,
J. K. HINES,
Att'ys for D'f't.

Endorsements: In the 5th circuit court of the U. S. *court* for the southern district of Georgia. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment. Interrogatories for Green Riddle. Filed March 3d, 1883. W. M. Heyward, dep. clerk. Due and legal service of these interrogatories acknowledged. Copy. Filing time and notice of filing waived, and let commission issue 26 Feb.,
148 1883. J. K. Hines, of counsel for d'f't. D'f't nominates B. T. Rawlings & W. H. Parsons as his commissioners. J. K. Hines, att'y for d'f't. Pl'ffs nominate M. Newman — P. R. Taliaferro as their commissioners. Feb. 28, 1883. Geo. A. Mercer, H. D. D. Twiggs, E. S. Langmade, O. H. Rogers, att'ys for pl'ffs.

Deposition of Green Riddle.

In the Circuit Court of the United States for the Southern District of Georgia.

SENEY ANN S. —— *et al. vs.* B. J. WILLIAMS.

Ejectment.

Examinations and depositions of witnessses produced, sworn, and examined by the undersigned commissioners, in virtue of the annexed commission issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing at William C. Riddle's residence, in Washington Co., on this 27th day of March, 1883.

GREEN RIDDLE, aged 52 years, being duly sworn, answers and deposes as follows, to wit:

To the first direct interrogatory the witness, answering, saith: My name is Green Riddle; age, 52 years; by occupation a farmer; in Washington county, Georgia.

2. To the second direct interrogatory the witness, answering, saith: I know the parties plaintiff and defendant in these interrogatories named.

3. To the third direct interrogatory the witness, answering,
149 saith: I know the 2 tracts of land in litigation between Mrs. Riddle and Col. Wilson, known as the Brown tract and Brantley Mill tract; they lie near Sun Hill, on the Central railroad.

4. To the fourth direct interrogatory the witness, answering, saith: At one time when I was in Sandersville Mr. Happ (old man Happ), Mr. Kenith Newsome, and Mr. Wilson (old Mr. Wilson) were talking together on the street not far from Mr. Lee Warthen's office about the Riddle lands, when I heard Mr. Wilson tell these gentlemen that he heard of some trust deed, but he thought they were lost or destroyed and never come up again.

5. To the fifth direct interrogatory the witness, answering, saith: I know nothing else touching the matters in question that will benefit the plaintiffs.

X 1. To the first cross-interrogatory the witness, answering, saith: I live on the land of plaintiff.

X 2. To the second cross-interrogatory the witness, answering, saith: I have been living there 6 years.

X 3. To the third cross-interrogatory the witness, answering, saith: I am a colored man.

X 4. To the fourth cross-interrogatory the witness, answering, saith: I have already answered this in my fourth answer to the direct interrogatory.

X 5. To the fifth cross-interrogatory the witness, answering, saith: I did not hear the defendant say when he first heard of the trust deed.

X 6. To the sixth cross-interrogatory the witness, answering, saith: All I ever heard him say in reference to the land in dispute
150 was given in my answer to the fourth direct interrogatory.

his
GREEN x RIDDLE.
mark.

Sworn to and subscribed before us this 27th March, 1883.
W. H. PARSONS, *Comm'r.*
M. NEWMAN, *Comm'r.*

Endorsements: In the circuit court of the United States for the southern district of Georgia. Seny Ann S. Riddle *et al. versus* B. J. Wilson. Commission to examine witnesses on the part of the plaintiff — for the examination of Green Riddle, Washington Co., Ga. Mercer, Twiggs, *et al.*, att'ys.

Endorsement on envelope: I, M. Newman, one of the commissioners in the within commission, do hereby certify that I have this day deposited in the post office at Sandersville the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 9th day of April, 1883. M. Newman, commissioner. W. H. Parsons, comm'r. M. Newman, comm'r. Post office, Sandersville, Ga. Received this package from M. Newman, com'r, to be transmitted by mail to Savannah, Ga., this 9th day of April, 1883. J. B. Roberts, postmaster. Post office, Savannah, Ga. Received this package by due course of mail this 10th day of April, 1883. L. McLaws, P. M. Received by mail and filed this 10th day of April, 1883. H. H. King, clerk.

Upon application of counsel for plaintiffs, ordered that the within depositions be opened in open court this Nov. 28th, 1883.
JAMES W. LOCKE, *Judge.*

151 *Commission to Examine Witnesses.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

In the Circuit Court of the United States for the Southern District of Georgia.

Deposition of Aiden Vining, witness on part of complainant.

To M. Newman, P. R. Taliaferro, B. T. Rawlings, & W. H. Parsons, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Seny Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is defendant, as well on the part of the said defendant as on the part of the said plaintiffs or either of them; and it is required of you

(or any two or more of you) that on certain days and at certain places by you to be appointed for that purpose you do cause the said Aiden Vining, witness on the part of the pl't'ffs, to come before you and then and there examine him upon the said interrogatories on his corporal oath first taken before you (or any two or more of you) on the Holy Evangelists; and that you do take such his examination and reduce it into writing; and when you shall have so taken it you are to send the same to the clerk of the circuit court of the United
152 States for the Southern District of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining of any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed, and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice Supreme Court of the United States, at the city of Savannah, this 3rd day of March, in the year of our Lord one thousand eight hundred and eighty-three and the one hundred and seventh year of American Independence.

[Seal of U. S. Circuit Court, Georgia.]

W. M. HEYWARD,
Deputy Clerk.

153 SCHEDULE.

The Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

W. H. PARSONS.
M. NEWMAN.

Subscribed and sworn to before me this 27th day of March, A. D. 1883.

[Seal Clerk Superior Court, Washington County, Georgia.]

A. M. MAYO,
Clerk S. C., W. C.

Ejectment.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogatories to be exhibited to Aiden Vining, a material witness on the part of the plaintiff in above-stated case, and who resides in the county of Washington and State of Georgia.

Int'y 1st. What is your name, age, and occupation and where do you reside?

Int'y 2d. Do you know the parties plaintiff and defendant in the title of these interrogatories named?

154 Int'y 3d. Are you acquainted with the lands formerly owned by Wm. C. Riddle, known as the "Brantley Mill" and "Brown" places, now in the possession of B. J. Wilson?

Int'y 4th. Did you or not ever have a conversation with B. J. Wilson about Wm. C. Riddle having made him a mortgage on said land? If you say that you did have such conversation state when and where it took place and what was said by said B. J. Wilson. Did he or not in that conversation make any statement going to show that he had notice of any trust deeds held by Mrs. Seny Ann S. Riddle to said land at the time said mortgage was made to him by said Wm. C. Riddle? If you answer that he did make such a statement state fully and particularly all that he said going to show that he had notice of said trust deeds before or at the time said mortgage was given?

Int'y 5th. Do you or not know any other matter or thing touching the matters in question that will tend to the benefit or advantage of the plaintiffs? If so, declare the same fully and at large, as if particularly interrogated thereto.

GEO. A. MERCER,
H. D. D. TWIGGS,
E. S. LANGMADE,
O. H. ROGERS,
Pl't'ffs' Att'ys.

Defendant objects to the 4th direct interrogatory on the ground that the same is leading, and propounds the following cross-interrogatories:

155 1 X Int'y. At what place and at what time and in whose presence did said conversation take place?

2 X Int'y. What mortgage did the defendant, B. J. Wilson, refer to?

3 X Int'y. Was it the first, second, or third mortgage that he referred to?

4 X Int'y. Please give the exact language used by defendant in this alleged conversation.

JAMES K. HINES,
Att'y for D'f't.

Endorsements: In the 5th circuit court of the United States for the southern dist. of Ga. April term, 1883. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment. Interrogatories for Aiden Vining. Filed March 3, 1883. W. M. Heyward, dep. clerk. Mercer, Twiggs, Langmade, Rogers, pl't'ffs' att'ys. Due and legal service of these interrogatories acknowledged. Copy, filing, notice of filing waived. Let the commission issue. Defendant nominates B. T. Rawlings & W. H. Parsons as his commissioners. 26th Feb., 1883. J. K. Hines, att'y for d'f't. Plaintiffs nominate M. Newman & P. R. Taliaferro as their commissioners. Feb. 28th, 1883. Geo. A. Mercer, H. D. D. Twiggs, E. S. Langmade, O. H. Rogers, att'ys for pl'ffs.

156 In the Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al.* *vs.* B. J. WILSON.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission, issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing at the residence of William C. Riddle, in the county of Washington, on this 27th day of March, 1883.

AIDEN VINING, aged 62 years, being duly sworn, answers and deposes as follows, to wit:

1. To the first direct interrogatory the witness, answering, saith: Aiden M. Vining; 62 years old; a farmer in Washington county, Georgia.

2. To the second direct interrogatory the witness, answering, saith: I know the parties, plaintiffs and defendant, in the title of these interrogatories named.

3. To the third direct interrogatory the witness, answering, saith: I am acquainted with the lands formerly owned by William C. Riddle known as the Brantley Mill and Brown places, now in possession of B. J. Wilson.

4. To the fourth direct interrogatory the witness, answering, saith: I had a conversation with B. J. Wilson about Wm. C. Riddle having made him a mortgage on said land. That conversation took place in Sandersville. Mr. Wilson said to me that Mr. William C. Riddle had told him that there was a trust deed, but that he (Wilson) thought that there was no trouble about it. I can't say positively whether that conversation was held between us in Col. Warthen's

office or in the court-house yard. I understood Mr. Wilson
157 to say that Mr. Riddle had told him of the existence of that trust deed at the time Mr. Riddle made the mortgage. To the best of my recollection, this conversation between us was at the fall court in 1877 or 1878.

5. To the fifth direct interrogatory the witness, answering, saith: I know nothing else that would be of any advantage to the plaintiff.

X 1. To the first cross-interrogatory the witness, answering, saith: Either in the court-house yard or Col. Warthen's office, at the fall court of 1877 or 1878, no one else being present, as I remember, but Col. Wilson and myself.

X 2. To the second cross-interrogatory the witness, answering, saith: I don't know what mortgage Mr. Wilson referred to.

X 3. To the third cross-interrogatory the witness, answering, saith: I don't know.

X 4. To the fourth cross-interrogatory the witness, answering, saith: I was subpœnaed as a witness by Mr. Wilson in a case in Washington superior court, in 1877 or 1878, he had against Mr. Riddle, and I wanted to get off home, when I told Mr. Wilson that I could do him no good as a witness, when Mr. Wilson said to me that Mr. Riddle had told him when he made the mortgage to him that there was a trust deed to the land, but that he didn't think there would be any trouble.

ADIN M. VINING.

GEORGIA, *Washington County:*

Sworn to and subscribed before us this March 27, 1883.

W. H. PARSONS, *Com'r.*
M. NEWMAN, *Comm'r.*

158 Endorsements: In the circuit court of the United States for the southern district of Georgia. Seny Ann S. Riddle *et al. versus* B. J. Wilson. Commission to examine witnesses on the part of the plaintiffs for the examination of Aiden Vining. Mercer, Twiggs *et al.*, pl'ffs' att'ys.

Endorsements on envelope: I, M. Newman, one of the commissioners on the within commission, do hereby certify that I have this day deposited in the post office at Sandersville the enclosed commission and depositions for transmission by mail to Savannah, Ga. This 9th day of April, 1883. M. Newman, commissioner. W. H. Parsons, comm'r. (Seal.) M. Newman, comm'r. (Seal.) Post office, Sandersville, Ga. Received this package from M. Newman, commissioner, to be transmitted by mail to Savannah, Ga., this 9th day of April, 1883. J. B. Roberts, postmaster. Post office, Savannah, Ga. Received this package by due cours- of mail this 10th day of April, 1883. L. McLaws, P. M. Received by mail and filed this 10th day of April, 1883. H. H. King, clerk.

Commission to Examine Witness.

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

159 In the Circuit Court of the United States for the Southern District of Georgia.

Deposition of John T. Youngblood, witness on part of complainants.

To M. Newman, P. R. Taliaferro, B. T. Rawlings, & W. H. Parsons, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Seny Ann S. Riddle *et al.* are plaintiffs and B. J. Wilson is defendant, as well on the part of the said defendant as on the part of the said plaintiffs or either of them; and it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said John T. Youngblood, witness on the part of the plaintiffs, to come before you and then and there examine him upon the said interrogatories on his corporal oath first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such his examination and reduce it into writing, and when you shall have so taken it you are to send the same to the clerk of the circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you) distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the
160 schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Ch'f Justice Supreme Court of the United States, at the city of Savannah, this third day of March, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and seventh year of American Independence.

[Seal of United States Circuit Court, Georgia.]

WM. M. HEYWARD,
Deputy Clerk.

SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties to this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue
161 of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

M. NEWMAN.
B. T. RAWLINGS.

Subscribed and sworn to before me this 9th day of April, 1883.
[Seal Clerk Superior Court, Washington County, Georgia.]

A. M. MAYO,
Clerk Sup'r C't, W. C.

Ejectment.

In the 5th Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Interrogatories to be exhibited and propounded to John T. Youngblood, a material witness on the part of the plaintiffs, and who resides in the county of Washington and said State of Georgia.

1st Int'y. What is your name, age, and occupation, and where do you reside?

2nd Int'y. Do you know the parties plaintiff and defendant in the title of these interrogatories named or either or which of them?

3d Int'y. Have you or not at any time had a conversation
162 with the defendant, B. J. Wilson, in relation to a mortgage *fi. fa.* which he held against Wm. C. Riddle? And, if you say that you did, please state whether such conversation took place before the sale of Riddle's lands under said mortgage *fi. fa.* or not.

4th Int'y. If you say in answer to the 3d interrogatory that you had a conversation with said B. J. Wilson state whether or not you told him anything about the existence of certain trust deeds and what he said in reply.

5th Int'y. If you and said Wilson had such conversation as asked about in the 3d interrogatory state fully and particularly all that was said by you both. State whether or not there was anything said about the fifteen hundred acres now sued for and what was said about it.

6th Int'y. Do you or not know any other matter or thing touching the matters in question that will tend to the benefit or advantage of the plaintiffs? If so, declare the same fully and at large as if particularly interrogated thereto.

O. H. ROGERS,
E. S. LANGMADE,
H. D. D. TWIGGS,
GEO. A. MERCER,
Pl'ffs' Att'ys.

Defendant objected to foregoing interrogatories as leading and propounds the following cross-interrogatories:

1 X Int'y. Did not the conversation referred to in the foregoing interrogatories take place in Atlanta?

2nd X Int'y. If yea, why did you go to Atlanta? On what
163 business with defendant did you go there?

3d X Int'y. Did you not go there to compromise with defendant for a certain claim of his *vs.* W. C. Riddle & sureties? Did you not tell defendant that there were rumors that there were some old deeds to some of the land embraced in def't's mortgages? Did def't say that he had heard of these rumors before his mortgage was given?

4th X Int'y. Did you not tell def't of the rumors to induce him to compromise?

J. K. HINES,
Att'y for Def't.

Endorsements: In the 5th circuit court of the U. S. for the southern dist. of Georgia. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment. Interrogatories for John T. Youngblood. Filed March 3d, 1883. W. M. Heyward, dep. cl'k. Rogers, Langmade, Twiggs, Mercer.

Due and legal service of these interrogatories acknowledged. Copy, filing, time, and notice of filing waived. Let the commission issue.
D'f't nominated B. T. Rawlings & W. H. Parsons as his commissioners 26th Feb., 1883.

J. K. HINES,
Att'y for D'f't.

Plaintiffs nominated M. Newman & P. R. Taliaferro as commissioners Feb'y 28th, 1883.

GEO. A. MERCER,
H. D. D. TWIGGS,
E. S. LANGMADE,
O. H. ROGERS,
Pl'ffs' Att'ys.

164 In the Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al. vs.* B. J. WILSON.

Examination and deposition of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Sandersville, Georgia, on the 9th day of April, 1883.

J. T. YOUNGBLOOD, aged —, being duly sworn, answers and deposes as follows, to wit:

1. To the first interrogatory the witness, answering, says: J. T. Youngblood; sixty years old; farmer; in Sandersville.

2. To the 2d interrogatory witness, answering, says: I do.

3. To the 3 interrogatory witness, answering, says: I had a conversation with Mr. B. J. Wilson in relation to a mortgage *fi. fa.* against Mr. Riddle before the sale of the land under that *fi. fa.*

4. To the 4th interrogatory witness, answering, says: I did not tell him about the existence of certain trust deeds, but in a conversation with him I said there was a rumor out about the existence of certain trust deeds in favor of Mrs. Riddle, and he replied that he had heard such a rumor.

5. To the 5th interrogatory witness, answering, says: That he partly answered this in the 4th interrogatory, but I do not recollect having said myself or heard him say anything about the fifteen hundred acres now sued for.

6. To the sixth interrogatory witness, answering, says: I do not.

165 X 1. To the first cross-interrogatory witness, answering, says: Yes.

X 2. To the second cross-interrogatory witness, answering, says: I went to Atlanta to see Mr. Wilson in reference to a compromise which I wanted to make in my own behalf and in behalf of other sureties on a forthcoming bond on personal property levied on the Brown place and other farms of Mr. Riddle.

X 3. To the third — interrogatory witness, answering, says: I did. I told Mr. Wilson about the rumors, as answered in my answer to the 4th direct interrogatory. I did not hear Mr. Wilson say that he heard of these rumors before the mortgage was given.

X 4. To the fourth — interrogatory witness, answering, says: I did not speak of these rumors to induce Mr. Wilson to make the compromise I came for.

J. T. YOUNGBLOOD.

Sworn to and subscribed before us, Sandersville, Ga., April 9th, 1883.

M. NEWMAN, *Comm'r.*
B. T. RAWLINGS, *Comm'r.*

Endorsements: In the circuit court of the United States for the southern district of Georgia. Seny Ann S. Riddle *et al. vs.* B. J. Wilson. Commission to examine witnesses on the part of the plaintiffs; for the examination of John T. Youngblood, Washington Co., Ga. Mercer, Twiggs, *et al.*, pl'ff's atty's.

Endorsement on envelope: I, M. Newman, one of the commissioners on the within commission, do hereby certify that I
166 have this day deposited in the post office at Sandersville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Ga., this 9th day of April, 1883. M. Newman, commissioner. M. Newman, comm'r. B. T. Rawlings, comm'r. Post office, Sandersville, Ga. Received this package from M. Newman, com'r, to be transmitted by mail to Savannah, Ga., this 9th day of April, 1883. J. B. Roberts, postmaster. Post office, Savannah, Ga. Received this package by due course of mail this 10th day of April, 1883. L. McLaws, P. M. J. Received by mail and filed this 10th day of April, 1883. H. H. King, clerk.

167 ***Further Testimony for Complainants.***

Depositions of A. D. Jernigan, Ira Waldon, & others, material witnesses for complainants.

STATE OF GEORGIA, *Washington County:*

By virtue of an order passed by Judge James W. Locke, of the United States circuit court, on the 8th day of October, 1883, appointing me special commissioner to examine witnesses in the cause of W. C. Riddle, trustee of Seeny Ann Riddle, *et al. vs.* B. J. Wilson, now pending in said court, I convened the commissioner's court on the 25th day of October, 1883, for the purpose of taking the testimony of witnesses in the above-stated case.

On motion of defendant's counsel, the court adjourned until the 2nd day of November, 1883.

The commissioner's court convened to-day, November 2nd, 1883, when the following-named witnesses were sworn according to law, at Sandersville, in said State and county, and testified as follows:

AUGUSTUS D. JERNIGAN says:

Q. What is your name, age, and residence?

A. A. D. Jernigan is my name; age, 56 years; Gainesville, Fla., residence.

Q. How long have you resided at Gainesville, Fla.?

A. I have resided there 10 years.

Q. Where did you reside before you went to Gainesville, Fla.?

A. At Sandersville, Georgia.

Q. How long had you lived at Sandersville, Georgia, previous to your removal to Gainesville, Fla.?

168 A. I was born*ed* and raised in this county of Washington all my life until I went to Gainesville, Fla.

Q. What was your occupation during the years 1852, 1853, & 1854?

A. I was deputy clerk of the superior court of Washington county, Ga., under my father, Louis A. Jernigan. I was sworn in as deputy clerk — 1848 & continued in that office until 1860, when I was elected clerk.

Q. Where were the records of the superior court kept during your term of office?

A. They were kept in the office of the clerk of the superior court of Washington county.

Q. Were the records of deeds destroyed in 1854?

A. I do not recollect.

Q. Were they destroyed in 1864?

A. They were destroyed by Gen'l Sherman's army. I saw that.

Q. What duties did you perform while you were d'p't. clerk?

A. I recorded deeds, judgements, &c.

Q. Have you any knowledge of a trust deed from W. C. Riddle to his wife and children?

A. I have no knowledge or recollection of any particular deed being recorded, having recorded so many.

Q. Are you acquainted with the handwriting of Louis A. Jernigan from having seen him write?

A. I am well acquainted with the handwriting of Louis A. Jernigan from having seen him write, being deputy clerk under him.

Q. Is Louis A. Jernigan dead or living?

A. Louis A. Jernigan died in May, 1861.

169 (Here a trust deed from W. C. Riddle to himself as trustee for Seeny Ann Riddle and her children, attached to the interrogatories of E. S. Langmade and Ira Walden, was handed to the witness for examination and the following questions asked:)

Q. Do you know whose handwriting the certificate of registry and signature of certificate bearing date 26th day of May, 1853, is in?

A. It is in my father's, L. A. Jernigan's, handwriting, who was clerk of the superior court of Washington — at that date.

Q. Was there a book of records for deeds, marked letter "Z," at that time in the office?

A. There was.

Defendant's counsel objected to this question on the ground that it is leading.

Q. Was there or not a record book of deeds marked with the last letter of the alphabet?

A. There was. The next books commenced with "A A" & B B.

Cross:

Q. Mr. Jernigan, there were a great many deeds recorded in the year 1853?

A. There was.

Q. Those deeds were recorded by your father and the registry signed by him?

A. Yes; I might have recorded some of them, but does not recollect any particular deed.

Q. When you recorded a deed did you sign your name or your father's?

A. I signed my name as deputy clerk.

A. D. JERNIGAN.

Answered, sworn to, and subscribed to before me this Nov. 2d, 1883.

W. R. ROBSON, [L. S.]
Special Commissioner.

170 IRA WALDEN, sworn, says:

Q. What is your name, age, and where do you reside?

A. My name is Ira Walden; I reside in Washington county, Georgia; I am 74 years old.

Q. How long have you resided in Washington county?

A. I moved to the county — 1836; I have resided in the county since that date.

Q. Have you not seen a trust deed from W. C. Riddle to himself, as trustee for Seeny Ann Riddle and her children, for the 1,500 acres of land now in dispute?

A. I have seen said deed.

Q. When and under what circumstances did you see said deed?

A. It was presented to me in April, 1853, at the "Brown Place," while I was holding justice court; it was presented to me by W. C. Riddle; it was presented to me for the purpose of having me sign as a witness.

Q. Did you or not sign said deed as a witness?

A. I did, sir.

Defendant's counsel objects to the last question as leading.

Q. Did you or not hold any official position in the year 1853?

A. I was justice of the peace of the 93d district of Washington county.

Q. Did you or not witness the signature of said deed, and who was the other witness?

A. I did sign said deed as a witness; Franklin Tanner was the other witness.

(Here the plaintiff presented the deed attached to the interrogatories of E. S. Langmade and Ira Walden for identification, & propounded the following question:)

171 —. Is not the deed the same one that you witnessed in April, 1853, for W. C. Riddle?

A. It is the same deed.

Q. Have you seen this deed since April, 1853?

A. I saw said deed in February, 1880.

Q. Where did you see —, and under what circumstances — said deed *was* shown to you in February, 1880?

A. Mr. James M. Minar brought said deed to my house to see if I could identify it. I did examine the deed at that time and recognized it as the identical paper.

Q. When you witnessed this deed in 1853 did you see the other witness sign as a witness?

A. I did.

The last question objected to by defendant's counsel as being leading.

Q. Who else were present when Mr. James M. Miner presented the deed to you in February, 1880, for identification?

A. My wife, Elefair Walden, and my daughter, Leonora Walden.

Q. Look at the deed before you and say if you know who signed said deed and who signed it as witnesses.

A. William C. Riddle signed it. I signed it as a justice of the peace and Franklin Tanner signed it as a witness.

Q. What judicial office do — now hold?

A. I am a magistrate.

Q. Have you witnessed any deed for Wm. C. Riddle since the war between the States?

A. I have not.

Cross:

Q. Have you witnessed any other paper since the war?

172 A. I have not.

Q. Have you witnessed any paper for Mr. Minar since the war?

A. I have not.

The last question objected to by plaintiffs' counsel as being irrelevant.

Q. When Mr. Riddle presented this paper to you at Brown's did you read it over?

A. I did. It has always been my custom when any paper was presented to me to be witnessed by me officially to read it over and know what I was witnessing and for what purpose it was intended.

Q. Did you witness any other deed between any other parties during that year?

A. I did not, as I now recollect of.

Q. Did you witness any other deeds between any other parties in the year 1854?

A. I did not, that I now recollect. I did not keep any biography of all the papers witnessed by myself, & cannot remember all the small papers witnessed.

Q. Did you witness any deeds in 1855?

A. I did not, as I now recollect; since I have been an officer I have witnessed many deeds.

Q. Are you certain you saw Franklin Tanner sign the deed as a witness?

A. Yes; I am confident of it.

Q. Why are you confident of it?

A. I sometimes keep a record of the deeds witnessed by me. I have examined my record and find an entry of this deed.

173 This refreshes my memory and makes me feel confident.

Q. When did you last see this record?

A. I think it was in the year 1880, soon after Mr. Minar brought the deed to me. I do not keep a record of all the trivial matters witnessed by him; but this being an important matter he did make a record of it; he might be called on about it.

Q. Have you seen the record of signing the deed this year, 1883?

A. I think I have seen it this year. It is at home at this time for anybody to see.

Q. Give us, as near as you can, the form of the record of witnessing that deed?

A. State of Georgia, Washington county: I have this day witnessed a deed of trust from W. C. Riddle to his wife, Seeny Ann Riddle, and her children to 1,500 acres of land lying in Washington county, State of Georgia, this 23d April, 1853, and the same was executed before me.

Q. Is that all the record? It is the purport of it?

A. It is very had for a man to remember a record *verbatim.*

Q. When did you make the record?

A. On the 23d day of April, 1853.

Q. Where was this deed brought to you at?

A. At the Brown place; I was holding court. It was on my court day.

Q. Were you engaged in court business on that day?

A. I was; there were several cases before me that day.

Q. When Mr. Riddle brought you the deed it was ready written?

174 —. It was. I had nothing to do with the writing of the deed.

Q. Has it been your custom in witnessing papers to sign your name before the other subscribing witness?

A. I have done it several times in my life, not knowing that it made any difference in law who signed first. On that day I was in a hurry to attend to the business of my court, an- the other witness, Franklin Tanner, being a slow man, I signed the deed first. I called him afterwards and he came up and signed it as a witness.

Q. Can you name any other deed in which you sign- first?

A. I cannot recall now any other deed where I signed first.

Q. Who brought you the deed in 1880?

A. Mr. James M. Minar brought me the deed in February, 1880, the first time that I had seen it since 1853.

Q. What relation is Minar to W. C. Riddle?

A. He married Mr. Riddle's daughter.

Q. What is the condition of your health?

A. My health is feeble. I have been suffering with something like bronchitis for last 12 months.

Q. Did you make any memoranda of any other deeds witnessed by you?

A. Yes.

Plaintiffs' counsel objects to the last question on the ground that it's illegal, the record itself being the highest evidence, and is irrelavant.

Q. What deed?

175 A. The deed to Chappel Church, he distinctly remembers as one of them; has no distinct recollection of any other.

Q. When was the deed to Chappel Church recorded in your memoranda?

A. In the year 1856; does not remember the month; the record will show.

Q. When did you last see the record of Chappel Church deed?

A. I last saw it during the present year.

IRA WALDEN.

Sworn to and subscribed before me this November 2nd, 1883.

W. G. ROBSON, [L. S.]
Special Commissioner.

ELEFAIR WALDEN, sworn, says:

Q. Have you or not ever seen a deed from William C. Riddle to himself as trustee for his wife, Seeny Ann Riddle, and her children?

A. I have seen the deed.

Q. When did you firet see the deed referred to?

A. I first saw it in Feb., 1880.

Q. How came you to see the deed?

A. Mr. Minar brought it to my house.

Q. What was his purpose in bringing the deed to your house?

A. He brought it there to see if Mr. Walden would recognise his handwriting.

Here the counsel for the plaintiff presented the deed attached to the interrogatories of E. S. Langmade and Ira Walden for identification and propounded the following question to the witness:

176 Q. The witness will look at the deed and say whether or not it is the identical deed that Mr. Minar brought to her house in 1880.

A. Witness examined the deed presented to her, and says that it is the identical deed that Mr. Minar brought to her house in 1880. She read the deed, all of it, except the portion torn off.

Cross:

Q. How do you know it was in the year 1880, and not in 1881, that the deed was brought to your house?

A. I know it by some negroes that lived with me that year. There was a negro woman at the well when I read the deed that Mr. Minar brought. I ask him to let me look at the deed; he handed — to me and I read it. The negro woman ask me what it was that Mr. Minar brought to me to read. The negro woman, I know, lived with me in 1880. The negro woman was at the well washing at the time; has not lived with us since 1880.

Q. What family of negroes were these?

A. Jerry Gordan's family.

Q. Where did they go when they left you?

A. They went on a place that Mr. Dock Whiddon bought from John Hall. They lived there two years, I think; they then moved this last winter on the land of Bennett Hall.

Q. Was it not in 1881 that Mr. Whiddon bought the place from Hall?

A. No, sir; it was in 1880.

Q. Was it not in the year 1881 that a controversy between Mr. Newsome & Bob Gordon occurred?

177 A. No; it was in 1880 that the controversy occurred. Frank Harden lived with Mr. Walden in 1881–1882.

Q. When was the last time you saw the deed Mr. Minar brought to your house?

A. I have not seen the deed since that date until to-day.

Q. Who has talked to you about the deed since 1880?

A. No person has talked to me about it until the other day, when I received a subpœna to attend court.

Q. Has Mr. Walden's health been good during the present year?

A. His health has not been good, but he kept up until 4th July and did his work.

Q. Has not his hearing been injured by taking medicine?

A. Mr. Walden's hearing has been effected by taking medicine. He can hear better now than he could a month ago. He is in very feeble health now. He is mending as fast now as could be expected of an old man. His hearing also is improving.

ELPHARE WALDEN.

Answered, sworn to, — subscribed before me this Nov. 2nd, 1883.

W. G. ROBSON,
Special Commissioner.

Dr. D. L. CHEATHAM, sworn, says:

Q. Were you present at the sale of the plantation of W. C. Riddle under a mortgage *fi. fa.* in favor of B. J. Wilson & Co.; when was said sale?

Defendant's counsel objects to this question on the ground
178 that it is not in rebuttal to any testimony since plaintiffs closed *his* testimony an- for irrelavancy.

A. I was present at sheriff's sale day, the first Tuesday in September, 1876. The sheriff called for bids. Col. Gilmore stepped forward, and he, as the attorney and friend, I think was the language of Mrs. Seeny Ann Riddle, and said there was a trust estate in the land to be sold, and whoever bought it would buy a lawsuit. The heirs would contend for it at the proper time.

Q. Who was present at the sale referred to, at the sale of the plantation?

A. B. J. Wilson, Judge McKay, Col. Gilmore, and others.

Q. Did this declaration of Col. Gilmore's elicit any response?

A. Judge McKay replied that this is all bosh.

Q. Who bid upon this land?

A. There was no bid, I remember, except B. J. Wilson's.

Q. Was. Dr. A. T. Cheatham or his wife present at that sale?

A. They were not; Dr. Cheatham left home the day before for the Centennial at Philadelphia.

Q. To whom was the land knocked off to?

A. To B. J. Wilson; price not remembered.

Cross:

Q. Col. Gilmore is the same person as Col. J. N. Gilmore, now counsel for plaintiffs?

A. Yes.

Q. Did not Col. J. N. Gilmore make the last bid next to B. J. Wilson?

A. I do not know that Col. Gilmore made a bid on the land.

D. L. CHEATHAM.

Answered, sworn to, and subscribed to before me November 2d, 1883.

W. G. ROBSON,
Special Comm'r.

179 A. YOUNGBLOOD, sworn, says:

Q. What is your name, age, and where do you reside?

A. Abraham Youngblood is my name; I am 51 years old; I reside in Washington county.

Q. Have you ever seen a trust deed from Wm. C. Riddle to himself as trustee for his wife, Seeny Ann Riddle, and her children to the land in dispute?

A. Yes; I have seen such a deed.

Q. When, where, and under what circumstances did you see said deed?

A. I saw the deed in 1881, March term of the superior court, on the public road leading from Sandersville to Riddleville, opposite the "Warthen place;" I was attending the court; Mr. Minar took me down to his father's and showed me the deed on the way.

Here the deed attached to the interrogatories of E. S. Langmade and Ira Walden was handed to the witness for indentification and the following question propounded:

Q. Is or not the deed presented the identical deed that was shown you by Mr. Minar in March, 1881?

A. Witness says he recognises the deed as the one shown him by Mr. Minar in March, 1881.

Q. What was the general appearance of the deed at the time it was shown you by Mr. Minar? Had it an old or new appearance at the time?

A. It had an old appearance at the time; it looked then like it does now.

A. YOUNGBLOOD.

Answered & sworn to and subscribed before me Nov. 3d, 1883.

W. G. ROBSON,
Special Commissioner.

180 M. H. ODOM, sworn, says:

Q. What is your name, age, and residence?

A. M. H. Odom is my name; 35 years old; I reside in Washington county.

Q. Have you ever seen a trust deed from W. C. Riddle to himself as trustee for his wife, Seeny Ann Riddle, for self and children conveying the land in dispute?

Counsel for defendant objects to this question as being leading.

A. Witness says that he has seen such a deed.

Q. Have you or not ever seen a trust deed from William C. Riddle conveying the land in dispute to himself as trustee for his wife, Seeny Ann Riddle, and her children?

A. I have seen such a deed.

Q. When and under what circumstances did you see the deed?

A. Mr. Minar asked me if I would swear to the handwriting of Ira Walden. Witness answers that he thought he could. It was at Sun Hill, C. R. R., in December, 1879. No deed was shown me at that time. Witness says he saw the deed in February, 1880; it was shown to me by Mr. Minar, at Sun Hill, C. R. R. Witness then recognised the handwriting of Ira Walden at that time.

Here the deed attached to the interrogatories of E. S. Langmade and Ira Walden was handed to the witness for identification and the following question propounded:

Q. Do you or not recognise the deed as the one shown you
181 by James M. Minar at Sun Hill, C. R. R., in February, 1880?

A. Witness says that the deed is the same deed presented to me by Mr. Minar in Feb'y, 1880. Witness at the time only read the deed down to where it was torn, then turned to the signature; then recognised the handwriting of Ira Walden, and said he would swear to it.

Cross:

Q. You can only recognise this deed as the one shown you by Mr. Minar by reading down to where it is torn and the signature of Ira Walden?

A. Yes.

Q. You did not see any indorsement on the back?

A. No, sir; I was after Walden's signature.

Q. Did you examine the deed very closely?

A. I did not; only I saw that the man who wrote it did not sign it; body of the deed is in a different handwriting from the handwriting of Walden.

Q. Are you a son-in-law of Ira Walden?

A. I am.

Q. If you only read the deed down to where it was torn how can you swear that it covers this land in dispute?

A. I cannot tell what land is in dispute only from hearsay. I do not know what land the deed covers. The Brown place was mentioned in the deed. Witness only read three or four lines at the be-

ginning at the time the deed was shown me by Mr. Minar in
182 1880, but I am certain the deed is the same one that was shown me.

M. H. ODOM.

Answered, sworn to, and subscribed before me this November 3d, 1883.

W. G. ROBSON,
Special Commissioner.

RUBEN MAYO, sworn, says:

Q. What is your name, age, and residence, and where did you reside in 1876?

A. My name is Ruben Mayo; I am 71 years old; I reside in Sandersville, Ga.; I resided there in 1876.

Q. Did you or not hold any official position in 1876?

A. I was sheriff of Washington county, Ga.

Q. Did you or not have in your possession a mortgage *fi. fa.* in favor of B. J. Wilson & Co., and what did you do with said *fi. fa.*?

A. I did have a mortgage *fi. fa.* in my possession; it was levied upon some land.

This question objected to by defendant's counsel, as the *fi. fa.* itself would be the highest evidence.

Col. Gilmore, pl'ffs' counsel, here demand- of defendant's counsel the production of said *fi. fa.*

Q. What land did you levy upon?

A. I levied upon the tract of land as the property of W. C. Riddle, lying near Sun Hill; do not remember the number of acres.

Q. What was done with the land after it was levied upon?

A. The land was legally advertised and sold to the highest
183 bidder in 1876; Mr. *Mr.* B. J. Wilson, one of the plaintiffs in the mortgage, was the purchaser.

This question objected to by defendant's counsel on the ground that there is higher evidence.

Q. Was there or not any notice by any one of a claim? If any notice, who give it? Was it given before or after the sale?

A. A verbal notice was given before the sale by W. C. Riddle after the advertisement was read.

Q. What was that notice?

A. I cannot recollect the exact words. The substance was this: That whoever bought the land suit would not stop there.

This question and answer objected to by defendant's counsel for irrelevancy.

Q. Did you or not proceed to sell the land after said notice?

A. I did.

Q. Do you or not recollect whether or not there was any attorney of Mrs. Seeny Ann Riddle present at that sale?

A. I do not know that there was.

Q. Have you any distinct recollection of the sale of that land?

A. Nothing; only that it was legally advertised and sold as other land.

REUBEN MAYO.

Answered, sworn to, and subscribed to before me November 3rd, 1883.

W. G. ROBSON,
Special Comm'r.

184 HENRY H. HOLMES, sworn, says:

Q. Are you acquainted with the tract of land known as the "Brantley Mill tract" and the "Brown place," now in possession of B. J. Wilson?

A. I am acquainted with that portion of the "Brantley Mill tract" that lies next to my place.

Q. What is that land worth per year for rent?

A. There is about a six-horse farm open. I consider it worth $450.00 rent per annum; does not know the value of the "Brown place" for rent.

Q. How long have you known the Brantley Mill tract?

A. About seven years.

Q. Is the $450.00 above repairs?

A. I consider it would be worth that per annum after the place was put in repair and the tenant then keep it in repair.

Q. Have there been or not any improvements put upon the Brantley Mill tract; if yea, what are they worth?

A. Some fencing comes to my knowledge worth about $180.00; thinks may be some small log houses; is not positive.

Q. What is the condition of the place as to repairs at this time?

A. The fencing is not very good at this time in some places. A portion of it in good repair.

Cross:

Q. What fencing do you allude to?

A. I refer to the fencing on the Brantley Mill tract.

Q. Don't you know that Mr. Wilson fixed and repaired a house for John Thigpen?

A. I do not know. There was a house there before Mr.
185 Thigpen moved there. It might have been repaired by Mr. Wilson.

Q. Are there enough houses on the place to rent it out?

A. I think there is enough houses on the place to rent out a six-house farm.

Q. Would you not have to repair the houses? Are not some of them in very bad condition?

A. I think some of the houses would have to be worked upon.

H. H. HOLMES.

Answered, sworn to, and subscribed before me this November 3rd, 1883.

W. G. ROBSON,
Special Comm'r.

IRWIN L. ADAMS, sworn, says:

Q. What is your age and where do you reside and what is your occupation?

A. I reside in Washington county; I am a planter by occupation; age, 43 years old.

Q. Are you acquainted with the Brown place and Brantley Mill tracts of land, now in the possession of Mr. B. J. Wilson?

A. I am acquainted with the two places by that name in Mr. Wilson's possession.

Q. What is the Brown place worth per year, rent?

A. The knowledge I have of the quantity of open land on the place—over and above repairs each and every year—it is worth $240.00.

Q. What is the Brantley Mill place worth each year above repairs?

A. If there be a six-horse farm of open land it would be worth $480.00 each year above repairs.

Q. How long have you known these places?

A. About thirty years since I first saw them.

186 Q. What improvements, if any, has Mr. Wilson put upon the Brown place?

A. I do not know what amount Mr. Wilson has put upon the place. There has been two log houses and one framed house put up upon the place within the last three years. I suppose they were put there by Mr. Wilson or his agent. I do not know whether Mr. Wilson put all the houses on the place or not.

Q. What are those two log houses and the framed house worth?

A. I suppose about $125.00.

Cross:

Q. You mean that the Brown place is worth $240.00 and the tenants do all the repairs?

A. Yes.

Q. What do you mean by repairs?

A. I mean by repairs keeping up the fencing around the plantation—do not include the building of houses.

Q. You know that within the last three years that there has been two log houses and one framed house. Has not cribs and stables and lot also was put there?

A. Witness is not positive that the cribs, stable, and lot also was put up within the last three years.

Q. Do you know of any other houses put up by Mr. Wilson?

A. I did not include the well crib and lot in my estimate of $125.00.

Q. Could you put up all the buildings on the Cheely place for $125.00.

187 A. I could not. The improvements on the Cheely place would be worth about $450.00. This estimate includes all the improvements on the place.

I. L. ADAMS.

Answered, sworn to, and subscribed before me this November 3rd, 1883.

W. G. ROBSON,
Special Commissioner.

WILLIAM E. CLARK, sworn, says:

Q. Have you or not ever seen a deed from W. C. Riddle to himself, as trustee for his wife, Seeny Ann Riddle, and her children, conveying a tract of land? If you say you have seen such a deed state when and where and under what circumstances you saw it; also state, if you know, what land was conveyed by said deed.

A. I have seen such a deed. The first time I saw it was in October, 1880. I saw it at Mr. Minar's house. The deed was presented to me as a surveyor to know if I could lay or run the land by the deed. Mr. Minar showed me the deed. The deed covered 1,000 acres known as the Brantley Mill tract and 500 acres known as the brown place.

Q. Did you survey the land by the deed Minar gave you?

A. I did survey the land, in 1882.

188 Here the counsel for pl'ff- handed — the deed attached to the interrogatories of E. S. Langmade and Ira Walden for identification and propounded the following question:

Q. Is it or not the same deed that James M. Minar handed to you in October, 1880?

A. This is the same deed that was handed to me in October, 1880, by Minar, and the one under which he surveyed the land.

W. E. CLARK.

Answered, subscribed, and sworn to before me this November 3rd, 1880.

W. G. ROBSON,
Special Comm'r.

JOHN N. GILMORE, sworn, says:

Q. Mr. Gilmore, do you or not know when the land belonging to W. C. Riddle was sold under a mortgage *fi. fa.* in favor of B. J. Wilson & Co.?

A. Yes; it was sold the first Tuesday in September, 1876.

Q. Who was the sheriff that sold the land and where was it sold?

A. Reuben Mayo was — sheriff that sold the land. It was sold in front part of the court-house in Sandersville, Ga.

Q. Were you present at said sale? Was B. J. Wilson, the plaintiff in the mortgage *fi. fa.*, present also?

A. I was present at said sale as an attorney for Mrs. Riddle & other parties not interested in this case. B. J. Wilson was also present at said sale.

189 Q. Does it not come within your knowledge that *that* any notice was given on that day, by any person, of Mrs. Riddle's claim upon the land that was sold?

Defendant's counsel objects to this question on the ground that it is a leading question and irrelevant.

Ans. I give notice on that day, as a friend of Mrs. Riddle and her attorney, before the sale and after the notice of Judge McKay, that 3,000 acres would not be sold, a claim having been made by the trustee of Mrs. Riddle, but that the remaining 7,000 acres would be sold. The notice was given after the advertisement was read and before sale that all parties would take notice that this was a trust estate, and purchaser would take notice that claims would be asserted to this trust property hereafter.

Q. Who bid off the land at the sale?

Ans. B. J. Wilson purchased the land; price not remembered. When I gave the notice Judge McKay, the attorney for B. J. Wilson, was standing by, and remarked, in reply to my notice: That is all bosh. I replied to that, that was a question he would learn, bosh or no bosh.

Q. Did you or not give notice that Mrs. Riddle's claim to this property would be asserted?

The defendant's counsel objects to this question as leading.

Ans. I represented Mrs. Riddle and gave the notice as her attorney.

190 Q. Did you or not inform the bystanders who you were the attorney for in that notice?

The defendant's counsel objects to this question as leading.

Ans. I did in my notice, representing Mrs. Riddle as her attorney.

Cross:

Q. Mr. Gilmore, will you give us exactly what notice you gave the bystanders on that day—what you said?

Ans. I gave notice, as a friend of Mrs. Riddle and as her attorney, that the 7,000 acres of land now offered for sale was a trust estate, and purchasers were notified that they would buy it under full notice that the trust interest would be asserted hereafter; that is in substance of what I said on that particular point. The notice may have been fuller and more distinct.

Q. Did you not after you give that notice bid on this land?

Ans. I am not positive whether I did or not.

Q. Did you not get T. J. Gilmore to bid for you?

Ans. I don't know that I got him to bid for me. I told him to bid on the land; that if the property sold at a low figure or nominal sum the matter could be adjusted between all parties at interest.

Q. Did not you and T. J. Gilmore bid on the land with the view of buying it for yourselves?

A. No; I did — for ourselves, but for the benefit of the parties interested in this property, but without their knowledge or authority.

191 Q. Who were the attorneys in the foreclosure of that mortgage that sold the land & collection of the debt?

The plaintiffs' attorneys object to this question on the ground that there is higher evidence of this and that it is irrelevant.

Ans. Plaintiff's attorneys were Col. R. L. Worthen; Gen. A. R. Wright represented the plaintiffs at one stage of the case. Messrs. Langmade and Evans represent- him; also Lanier and Anderson & Judge McKay. Up to the time of the sale counsel for defendant were Gen. H. R. Jackson, J. N. Gilmore; do not remember any other. My connection with the case commenced when B. J. Wilson commenced suit; do not remember the year; my impression now is that I commenced with the beginning of the case.

Q. Did you see Mrs. Riddle on the day of sale? Did she authorize you to give the notice for her?

Ans. I saw Mrs. Riddle before the day of sale. I think she told me the land had been levied upon, and that she wanted me to look after her interests, or words to that effect.

In rebuttal:

Q. Mr. Gilmore, do you know that Messrs. Langmade and Evans represented Col. B. J. Wilson in the chattel mortgage for $7,000.00?

Ans. I don't know but that is true, since being questioned on that point.

Q. Can you say that Mess. Langmade & Evans ever appeared in the case of the foreclosure of the mortgage on land?

192 Ans. No, sir; I cannot say, as this case has had so many phases and different claims, that they ever represent- the case of the foreclosure of a mortgage on land. Since my recollection has been refreshed, I know that Mess. Langmade & Evans were counsel for B. J. Wilson in the foreclosure of a mortgage on personality.

J. N. GILMORE.

Answered, sworn to, and subscribed before me this Nov'r 3d, 1883.

W. G. ROBSON,
Special Commissioner.

WILLIAM C. RIDDLE, sworn, says:

Q. Did you or not ever execute any mortgages to Wilson & Wilkerson; if yes, when?

A. Yes; in 1867 was the first mortgage I give them; I give another one in 1870 to land.

Q. At the time of the execution of these mortgages or before, state whether or not you give B. J. Wilson any notice of any trust estates in these lands mortgaged; state when and how.

The defendant's counsel object to this question on the ground—1st, that Mr. Riddle's testimony has already been taken on this point; 2d, it involves costs and is leading.

Ans. I did. In Savannah, in Mr. Wilson's office, when I give a mortgage for 800 acres in 1867. I told B. J. Wilson there was a trust deed made by my father to Mrs. Riddle and children to 3,000 acres of land; that he made out the mortgage for. He said that the mortgage was simply an accommodation paper; that it made

193 no difference. This conversation took place in Savannah in his office, at the time I was arranging to give him a mortgage

for 8,000 acres, in 1867. I took the mortgage up in 1868. Some time during the year 1869 he was at my house; we went to 12½ C. R. R., where W. J. Henderson then lived, and at Brantley Mill seat; he spoke of the water power there and asked me if he could buy it; that it would be a good place to build a factory. Then it was I told him it was not for sale; I could not sell it if I wanted to, as it belonged to Mrs. Riddle and her children. He wanted to know of me how much land I had, and I told him that I was in possession of about 10,000 acres; that I had no right to sell but about 5,500 acres, as I had made a deed to Mrs. Riddle and children to 1,500 acres of it, besides 3,000 acres that my father gave them. I showed him where they lay, and pointed out the Brantley Mill place and Brown place. He said that if I continued to work as I then was doing that I would own it all; that such farmers as I was to manage labor, with such merchants as he was to sell the crops, that he could make it all. I was not anticipating that he would ever want a mortgage any more from me, but in the spring of 1870 he asked me for a mortgage on the 10,000 acres, which included both of these trust deeds, that covers 4,500 acres, simply as a matter of accom-
194 modation to him, in order that he might raise money in New York as before, and as a matter of accommodation I give him the second mortgage, but with full notice of all these incumbrances, and he knows it.

Cross:

Q. How many mortgages did you give the firm of which B. J. Wilson was a partner?

Ans. I give two mortgages to the firm; the first mortgage was given Wilkerson, Wilson & Co., and was given on his home place of 8,000 acres, dated May 2d, 1867, for $8,000.00.

Q. Where was the first mortgage executed at?

Ans. My recollection is that it was executed up here in Washington county, Ga.

Q. Was Mr. Wilson present when you executed the first mortgage?

A. I do not recollect.

Q. Who were present when the first mortgage was executed?

Ans. I do not remember.

Q. Who witnessed the mortgage?

Ans. J. N. Gilmore & T. J. Gilmore he thinks witnessed it.

The plaintiff's counsel objects to this question on the ground that there is higher evidence of the fact.

Q. Where is the first mortgage?

Ans. I do not know; I have not looked for it; I have been bothered so much I have not seen it since I brought it here and had it to be cancelled.

Q. Where was the second mortgage executed?

Ans. It was made out by Mr. Wilson in Savannah, sent up here to me, and executed in Washington county.

195 Q. How was the mortgage sent to you—by mail or otherwise?

Ans. I think it was sent by one of Mr. Wilson's clerks.

Q. Was Mr. Wilson present or any member of the firm of B. J. Wilson & Co.?

Ans. Mr. Wilson nor any member of the firm was present at the execution of the mortgage.

Q. Where was that paper signed up?

Ans. I think it was done at Riddleville.

Q. From 1853 to 1876 did you ever give in any land as trust property?

The plaintiffs' counsel objects to this question on the ground that there is higher evidence of the fact.

Ans. I do not remember that I did.

Q. Did you ever give in for taxes the 1,500 acres in dispute or the 3,000 acres as trustee?

Ans. I do not remember that I ever did.

Q. Did you not give in all this property in your own name?

A. I did; having it all in possession.

Q. In 1865 you give in your property jointly with W. J. Henderson, amounting in the aggregate to 10,000 acres. Did that include the land in dispute?

Ans. It did.

Q. Did you ever make any return to the ordinary or any other court as trustee for your wife and children?

Ans. I did not.

Q. When did you say that you give Mr. Wilson notice of this trust property?

196 Ans. I give Mr. Wilson notice first in Savannah, in 1867, and the next time at the Brantley Mill site, in the spring of 1869.

Q. What was the notice you gave him in Savannah?

Ans. I give him notice that my father had given my wife and children 3,000 acres of land when I was making arrangements to give him a mortgage on the 8,000 acres.

Q. At that time did you tell him of the 1,500 acres?

Ans. I started to tell him, but he cut me off. This 1,500 acres was included in both mortgages.

Q. You were sworn as a witness in the case of B. J. Wilson & Co. *vs.* W. C. Riddle, Seeny Ann Riddle, claimants, in Washington superior court?

Ans. I was.

Q. Were you not asked this question: (Question.) Did you ever have a *a* conversation with Mr. Wilson, in Savannah, with reference to this trust estate before this mortgage was ever made? Was this question asked you?

Ans. I do not remember whether it was or not.

Q. Did you answer as follows: A. I did. He spoke about wanting papers when I went there to get supplies, and I agreed to mortgage 8,000 acres of land; and I said there was a trust deed on 3,000 acres, but the papers were destroyed and I did not expect they would be established. He said that would make no difference; he would

settle that up; should not bother me. He said he would
197 settle it up and there should be no trouble. That was before the first mortgage was given. That took place in Savannah.

Q. Did you swear that or not?

Ans. I do not recollect positively whether I did or not.

Q. On the same trial did you swear as follows: I think it was in 1867 the conversation took place, three years before this mortgage was made. I said then that on the land that there was a trust deed; I was giving him some other papers at the time. Did you swear that or not?

Ans. Does not recollect; is not positive about it. At that time I had reference to the last mortgage. The last mortgage is about 3 years after the first.

Q. Did you file a bill for injunction against B. J. Wilson & Co. on the 31st July, 1871; did — not file an amendment to that bill? (The plaintiffs' counsel objects to this question on the ground that it is irrelavant & there is higher evidence.) Is not that your signature? Did you make the affidavit swearing to the amended bill?

A. Witness answers I did.

Q. Did not you make this allegation in that amended bill: That since the filing of the same (meaning the original bill)—that is to say, on the 23d day of May, A. D. 1872—William H. Smythe, U. S. marshal, levied upon the property of your orator, known as his Home place and containing 10,000 acres, more or less?

Ans. I do not recollect it; I see my name.

198 The amended bill sworn to was handed to the witness, and he was asked if the above allegation was in it. Witness says the allegation is there; he sees it there.

Q. In giving in your direct testimony before the commissioner you read from a manuscript, did you not?

A. Yes.

Q. When was that manuscript written?

Ans. Last night; it is in my handwriting.

Q. Who was present when you wrote it?

Ans. Nobody.

Q. Who suggested to you the idea of writing your testimony?

—. Nobody, as now remember.

Now, after he had written it he showed it to his counsel and asked if he could not read it, and he was told he could if he wished to do so.

Here a copy of the paper read from by the witness was attached. Read his direct testimony.

W. G. ROBSON,
Special Commissioner.

Here follows a copy of his direct testimony:

When I gave W. & W. a mortgage on 8,000 acres of land in 1867 I told B. J. Wilson there was a trust deed made by my father to Mrs. W. C. Riddle and our children to 3,000 acres of the land that he made out the mortgage for, and he said the mortgage was

simply an accommodation paper and that it made no difference. This conversation took place in Savannah, in his office, at the time I was arranging to give him a mortgage for 8,000 acres, in
199 1867. I took that mortgage up in 1868, and some time during the year 1869 he was at my house, and we went to 12½ C. R. R., where M. J. Henderson then lived, and at the Brantley Mill seat. He spoke of the water-power there, and asked me if he could buy it; that it would be a good place to build a factory. Then it was that I told him that it was not for sale; that I could not sell it if I wanted to, as it belongs to Mrs. Riddle and the children. He then inquired of me how much land I had, & I told him that I was in possession of about 10,000 acres, but that I had no right to sell but about 5,500 acres of it, as I have made a deed to Mrs. R. and children to some 1,500 acres of it besides the 3,000 acres that my father give them, and I showed him where they lay, and pointed out to him the B. M. and Brown tracts. He said that if I continued to work as I then was doing that I would own it all; that such a farmer as I was to manage labor, & with merchants as he was to sell the crops, that we could make it all, and I was not anticipating nor had an idea that he would ever want a mortgage any more from me; but in the spring of 1870 he asked me for a mortgage on the 10,000 acres, which included both these trust deeds that covers 1,500 acres of it, simply as a matter of accommodation to him in order that he might raise money in New York as before, and as — matter of accommodation I give him this second mortgage, but *will*
200 full notice of all these encumbrances, and he knows it.

In rebuttal:

Q. In your direct testimony you stated that in 1865 you give in your property as belonging jointly to yourself and father. Did your father have any interest in the Brantley Mill tract and Brown tract at that time or any other time?

A. Witness answers that he did not.

Q. In the extract read from this amended bill how was you defending this suit in this amended bill—in your own right individually or as trustee, or both?

The defendant's counsel objects to this question on the ground that there is higher evidence of the fact.

Ans. Both in my own right and as trustee.

WILLIAM C. RIDDLE.

Answered, sworn to, and subscribed before me this November 3rd, 1883.

W. G. ROBSON,
Special Comm'r.

CHARLES D. THIGPEN, sworn, says:

Q. Has any person talked to you about this case yesterday or to-day?

A. The case has been mentioned to me, but does not recollect who by; nothing has been said to him about what any witness testified to.

Q. Have you or not ever seen a deed from William C. Riddle to himself as trustee for his wife, Seeny Ann Riddle, and their children?

Ans. I have.

Q. When did you first see that deed?

Ans. It was in 1878.

201 Q. What land does that deed cover?

Ans. It covers a part of the Brown place and the Brantley Mill tract.

Here plaintiffs' counsel handed the deed attached to the interrogatories of E. S. Langmade and Ira Walden for identification & propounds the following question:

Q. Is or not the deed presented the same deed that you saw in '1878?

Ans. It is the same deed I saw in 1878.

Q. State when and where and under what circumstances you first saw this deed?

Ans. I think it was between the first & 20th of December, 1878; I saw it at 12½ C. R. R. Mr. Minar showed the deed to me. I read the deed. I have made copies of the deed. I am positive this is the same deed.

Q. Are you or not acquainted with Brantley Mill & Brown tracts of land now in the possession of B. J. Wilson in the county?

A. I am.

Q. What are those places worth per year rent?

Ans. Both places are worth about $900.00, the tenant keeping the places in the same repair they are now in.

Q. Do you or not know what Col. Wilson has been renting the places at per year?

Objection made by counsel for the defendant upon the ground that the defendant could only be liable for rent or mesne profits for the worth of the land yearly.

A. I know what he rented the Brown place for in 1879.

202 I leased the place myself; the contract was in writing.

This question objected to by defendant's counsel unless the writing is produced.

Cross:

Q. What relation are you to James M. Minar, one of the plaintiffs?

Ans. I am a brother of James M. Minar, who married the daughter of Mr. W. C. Riddle; I am the full brother; he had his name changed.

C. D. THIGPEN.

Answered, sworn to, and subscribed before me this November 3rd, 1883.

Here plaintiffs closed their evidence.

Ira Walden, having been served on yesterday with a *subpœna duces tecum* to produce to-day before the commissioner the memorandum referred to in his testimony taken yesterday, being now called, at the instance of the defendants, fails to appear or otherwise to produce said memorandum, he having been served by the defendants with said subpœna.

This call for Ira Walden was made at 8 o'clock at night November 3rd, 1883. Ira Walden has not been in attendance upon the commissioner's court to-day, November 3rd, 1883.

The defendant's counsel did not introduce any testimony.

The commissioner's court adjourned Nov. 3rd, 1883.

W. G. ROBSON,
Special Com'r.

203 GEORGIA, *Washington County:*

I, William G. Robson, special commissioner appointed by James W. Locke, judge of the United States circuit court, on the 8th day of October, 1883, to take the testimony in the case of William C. Riddle, trustee for Seeny Ann Riddle and her children, *et al. vs.* B. J. Wilson, ejectment and equity by amendment, now pending in said court, at Savannah, Ga., do hereby certify that the above and foregoing sixty-one (61) pages of written matter contains a true and complete record of the evidence of witnesses taken before me — Sandersville, Ga., on the 2nd & 3rd days of November, 1883.

In testimony whereof I have this day set my hand and affixed my seal this the 5th day of November, 1883.

WILLIAM G. ROBSON, [L. S.]
Special Commissioner.

Attest: M. NEWMAN,
Ordinary, Washington County, Ga.

Endorsements on envelope: Southern Express Company. From W. G. Robson, Sandersville, Ga. Sealed by Southern Express Company. Received by express & filed this November 7th, 1883. Marion Erwin, dep'ty clerk.

Upon application of counsel for plaintiffs ordered that the within depositions be opened in open court this Nov. 28th, 1883.

JAMES W. LOCKE, *Judge.*

204 *Testimony Offered in Evidence on Part of Defendants.*

In the Circuit Court of the United States for the Northern District of Georgia.

WILLIAM C. RIDDLE, Trustee of Seny Ann S. Riddle, *et al.*

vs.

BENJAMIN J. WILSON.

Bill for relief, &c.

Interrogatories to be exhibited to the defendant, Benjamin J. Wilson a material witness in his own behalf, who resides in the county of Fulton, State of Georgia.

Int. 1st. Were you a member of the firm of Wilkerson and Wilson? Explain the circumstances under which that firm commenced and continued dealings with William C. Riddle; the nature and extent of such dealings, and the origin and purpose of the mortgage which he gave to the firm; also relate the like facts touching the second or renewal mortgage, and the dealings which led to and followed its execution. Explain likewise any change which took place in the name and membership of the firm.

Int. 2d. At or before the date of these mortgages or either of them, or at or before making any advances of money or property on the security of said mortgages or either of them, did you or not have any notice, knowledge, information, or belief that the premises sued for in the present cause was trust property or not the individual property of the mortgagor?

205 Int. 2d. In whose possession and apparent use were said premises; and if you had any reasons for believing that they were the individual property of the mortgagor, what were those reasons? Did he or not tell you there was a trust deed or a trust or a claim of trust? What, if anything, did you ever say to him about wanting the lien to use as collateral? Was or not that the purpose for which a lien was wanted? When & by whom did you first hear it said there was a trust deed or any alleged title adverse to Riddle, the mortgagor?

Int. 3d. When the premises were sold under the mortgage *fi. fa.* and bought by you, who of the complainants, if any, were present, and did they or not give any notice then of the trust deed? If any proclamation was made, who made it and what was its substance? Did that proclamation apply only to these premises now in dispute or have a wider application?

Int. 4th. What can you say of the premises now in controversy having been embraced in the same levy with others, and of Mrs. Seny Ann S. Riddle having claimed the others or some of them, and letting these go to sale?

Int. 5th. Were you or not present in Washington superior court when her claim was tried? If so, was Wm. C. Riddle, her husband, a witness in that trial? If he was, who, if any person, took down

or reported his testimony? What was the substance of his
206 evidence in reference to trust deeds or any deeds in favor of his wife to property embraced in the mortgage?

Int'y 6th. What conversation, if any, did you ever have with one Simon (or Simon W.) Thomas, a son-in-law of W. C. Riddle, relative to any trust claim on the premises in dispute? If any, when and where was said conversation had, and who was present? Was said conversation had before or after the mortgages you held on the premises in dispute were made? State said conversation fully and how it commenced.

Int'y 7th. State all the circumstances which led to your acquiring possession of the premises in dispute. If any negotiations leading to a settlement of the litigation between you or your firm and William C. Riddle were had between you and him, how long were such negotiations pending before said settlement took place?

Int'y 8th. Attach to your answers a copy of the agreement of settlement, if any was made, of the litigation referred to.

LANIER & ANDERSON,
Def't's Sol's.

Ejectment, Relief, &c.

In the Circuit Court of the United States for the Southern District of Georgia.

SENY ANN S. RIDDLE *et al.* vs. B. J. WILSON.

And now comes the plaintiffs, and, after objecting to all the foregoing direct interrogatories on the grounds that they are leading and irrelevant, propounds the following cross-interrogatories to the witness, B. J. Wilson:

207 Cross:

1st X. Were you one of the securities on the official bond of John W. Renfroe, as State treasurer, during the years 1876, 1877, & 1878?

2nd X. Were you sworn before a committee of the Georgia Legislature at any time as to the sufficiency of said bond and as to your own financial worth?

3d X. If, in answer to the 2nd X int'y, you state that you were sworn before said committee, state if you did not swear that you owned ten thousand (10,000) acres of land in Washington county worth one hundred thousand ($100,000) dollars.

4th X. Did you, at the time you testified, claim or own any other lands in Washington county except the Wm. C. Riddle land? If you say that you did, please state where it is, who it adjoins, how many acres there is of it, and all about it.

5th X. Please look at the attached slip from the Atlanta Constitution, reporting your evidence before the committee of the Legislature, and say whether or not your evidence before said committee is correctly reported in said printed slip; also state, as near as you can recollect, the date that you were before said committee.

7th X. Did you not, at the time the Riddle land was offered by the sheriff for sale under your mortgage *fi. fa.*, hear John N. Gil-

more, attorney-at-law for Mrs. Seny Ann S. Riddle and her children, give notice to the crowd collected at said sale that Mrs. Seny
208 Ann S. Riddle claimed said land as trust property? If you say that you did not hear said statement and notice, please state what you did hear him say about Mrs. Riddle's claim at that time.

8th X. If you know any other matter or thing that you think will benefit the plaintiffs, please state it as if you were specially interrogated thereabout.

E. S. LANGMADE,
O. H. ROGERS,
Att'ys for Pl't'ffs.

Printed slip referred to above and attached to original deposition:

"B. J. WILSON, sworn:

Q. Col. Wilson, Mr. Renfroe, as State treasurer, has given three bonds—one in November, 1875, one in February, 1876, and one in February, 1877. Were you on his first bond, 1875?

A. I rather think I was.

Q. Then you have signed all three of the bonds?

A. That's my impression; I know I'm on the two latter. I am under the impression I was on the first, but I am not sure. I was on the two latter.

Q. We, of course, do not wish to inquire into your privacy, but you will see the propriety of our asking you about your solvency, since you are on his bonds for 1876 and '77 to the extent of thirty thousand dollars?

A. Yes, sir.

Q. Will you state to the committee what your property
209 consists of now—real estate and personalty?

A. I own real estate in Washington county.

Q. You are on his bond only for $10,000 now; $30,000 for the bond of 1876?

A. I suppose so; I don't remember what the amount was in 1876. I know I am on for $10,000 now. I went to Governor Colquitt and asked him if I could sign that way, and if I could not I would not sign at all, and he said that I could. I have one plantation in Washington county that cost me over a hundred thousand dollars.

Q. And worth about that now?

A. I value it still at that, sir.

Q. At one hundred thousand dollars?

A. Yes, sir; I don't value it at that on the tax-books. I should dislike to sell it for less than that. I think I gave it in for $30,000.

Q. What is the market value?

A. Well, I don't know; I don't think there is any market at all. There are, in round numbers, 10,000 acres in a fine state of cultivation. My income from it varies from $1,400 to $2,500 a year.

Q. Net?

A. Yes, sir; well, there is a little tax, $400 or $500. I don't farm on it at all; I just rent it. I have property amounting to $50,000, I suppose, in the city.

Q. Real estate?

A. Yes, sir; and I have a place in South Carolina, in eight
210 miles of Savannah, of 20,000 acres. I apprehend that will cover my liabilities.

Q. Your liabilities are——

A. Eight thousand dollars; no more than eight thousand dollars; which is lying at easy interest.

Q. What is your connection now with the Georgia Banking and Trust Company?

A. None at all; only a mere stockholder.

Q. Will you say about what amount?

A. Well, I don't know what it is worth; bank stock has no value. It cost me $12,000. I think there are a hundred and fourteen shares.

Q. When did you first become a stockholder, Colonel?

A. I think, perhaps, in '72 or '73.

Q. You were a stockholder and a director in that bank in the early part of '76?

A. Yes, sir; I was a director up to 1878, I think, when I resigned.

Q. You resigned in January, 1878?

A. Yes, sir; I am not sure when it was.

Q. January, 1877, wasn't it?"

Here the newspaper slip ends, leaving last question unanswered.

Endorsements: In the United States circuit court for the southern district of Georgia. Seney Ann S. Riddle *et al. vs.* B. J. Wilson. Ejectment & relief. Interrogatories for B. J. Wilson. Filed in clerk's office, Aug. 23d, 1883. Marion Erwin, dep'y clerk. Copy of interrogatories and notice of the time of filing waived. This Aug. 20th, 1883. O. H. Rogers, att'y for pl't'ffs. Filed Aug. 23d, 1883. M. Erwin, dep'y clerk.

211 *Commission to Examine Witnesses.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

In the Circuit Court of the United States for the Southern District of Georgia.

To Marshal J. Clarke, Joseph J. Eckford, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, — William C. Riddle, trustee, is complainant and Benj. J. Wilson is defendant, as well on the part of the said defendant as on the part of the said plaintiffs or either of them.

And it is required of you (or any two or more of you) that on certain days and at certain places by you to be appointed for that purpose you do cause the said Benj. J. Wilson, who resides in the county of Fulton and State of Georgia, a material witness on the part of the defendant, to come before you, and then and there examine him upon the said interrogatories on his corporal oath first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such his examination and reduce it into writing;
212 and when you shall have so taken it you are to send the same to the clerk of the circuit court of the United States for the southern district of Georgia, at Savannah, Ga., closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or to be present at such examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this 23d day of August, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and eighth year of American Independence.

[Seal of the Court.]

MARION ERWIN,
Deputy Clerk C. C.

213 SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commis-

sion until publication shall pass by rule or order of said court, so help you God.

MARSHALL J. CLARK.
JOS. J. ECFORD.

Subscribed and sworn to before each other this 30th day of August, A. D. 1883.

MARSHALL J. CLARK, *Com'r.*
JOS. J. ECFORD, *Com'r.*

Endorsements: In the circuit court of the United States for the southern district of Georgia, eastern division. Wm. C. Riddle, trustee, compl't, *vs.* B. J. Wilson, d'f't. Commission to examine witnesses on the part of the defendant for the examination of B. J. Wilson, Fulton Co., Ga. Issued Aug. 23d, 1883. Marion Erwin, dep'y clerk C. C.

214 *Testimony Offered in Evidence by Defendant.*

In Circuit Court of the United States for the Southern District of Ga.

WILLIAM C. RIDDLE, Trustee of Seny Ann S. Riddle, *et al.*

vs.

BENJ. J. WILSON.

Deposition of Benj. J. Wilson, witness on part of d'f't.

Bill for relief, &c.

Examination and deposition of a witness sworn and examined by the undersigned commissioners in virtue of the annexed commission, issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Atlanta, Ga., on this 30th day of August, 1883.

BENJAMIN J. WILSON, aged sixty years, being duly sworn, answers and deposes as follows:

1 Int'y. To the first direct int'y the witness, answering, saith: I was a member of the firm of Wilkinson & Wilson, doing business in Savannah as cotton factors and commission merchants during a part of the year 1866 & all of the years 1867, 1868, 1869, & 1870. Our firm commenced dealing with William C. Riddle in the fall of 1866 by an advance by myself in person on account of the firm to him of $2,000 at his home in Washington county, Ga., to aid him in his farming operations, he promising to ship cotton to our firm to sell to pay this as well as any other advances we might make him. At the time of the advance of $2,000 Riddle represented to me that he owned the large tract of land upon which he was then living, except a small piece owned by his father, who was then very old, and upon whose death it would come to him, as he said, as he was the only
215 heir. The tract which said Riddle claimed to own consisted, as he stated, of about 12,000 acres. Upon careful inquiry in the neighborhood these statements were confirmed, and, being be-

lieved by me, large advances were made by our firm during the years 1867 and 1868, to secure which he executed a mortgage to our firm upon 8,000 acres of the above-mentioned lands. The mortgage was also to cover advances to be made in 1869. At the close of that year he owed us a balance of $27,152.42. Being unable to pay this, it was agreed that he should execute to us a mortgage upon 10,000 acres of the above lands to secure this debt and any advances we might make him in 1870. This last mortgage was for $90,000 and made May 5, 1870. Before that date my son, J. Ben. Wilson, was admitted into the firm and the name of it changed to B. J. Wilson & Co. The latter mortgage, in consequence, was made to this firm. It was executed at the home of said Riddle, in Washington county, Ga. Our firm did business with him during the years mentioned to the amount of $164,307.77—that is to say, that we furnished him money and supplies to that amount, exclusive of commissions and interest.

2 Int'y. To the second direct int'y the witness, answering, saith: I never had any notice, either before or at the date of those mortgages, nor at or before making advances of money or property on the security of those mortgages or either of them, nor had I any
all notice, knowledge, or belief that the premises sued for in
216 the present case was trust property and not the individual property of the mortgagor, W. C. Riddle. Before making any advances I visited Mr. Riddle at his home and found him in possession of the land sued for, and by reason of diligent inquiry among his neighbours and the statements of himself I believed him to be the true and only owner of the land. He did not tell me at any time that there was a trust deed or any claim of trust upon any of those lands, nor did he ever speak of or mention to me a trust deed upon any lands at any time, either before or after the date of either of the mortgages given to our firm; on the contrary, he took me in his buggy previous to the execution of either of the mortgages and carried me over his land, introducing me to his tenants and croppers, explaining his plans for farming and the final distribution of the places by him among his children at his death. I am sure that he showed me the lands in dispute as his individual property, and he was then in possession of them. I never proposed to take, nor did I ever take, a mortgage from Riddle or any other lien for the purpose of using it as a collateral; such was not the purpose in taking said mortgages. While the business of our firm was large, our means were likewise large, and we seldom used as collateral such a paper. The first I ever heard of a trust deed was through R. L. Warthen, Esq., of Sandersville, Ga., my attorney for foreclosing the mortgage
for $90,000. This was at the spring term, 1876, of the supe-
217 rior court of Washington county. He mentioned it merely as a rumor and expressed disbelief in its truth. This trust was of 3,000 acres, which formed no part of the premises in dispute.

3 Int'y. To the third direct int'y the witness, answering, saith: When the premises were sold under the mortgage *fi. fa.* and bought by me there were present at the sale W. C. Riddle, the mortgagor; James M. Minar and Dr. Cheatham, sons-in-law of said Riddle, and,

I think, John P. Riddle, son of said mortgagor. None of them gave notice of a trust deed or trust claim of any kind. One John N. Gilmore was at the sale and stated, before it took place, that whoever bought the land would take a risk, as Riddle would get it all back again. He gave no notice of any trust deed to the premises now sued for, nor did he mention any trust deed at all; his remarks were made in a general way and appeared to me to be a ruse to scare off bidders; they were certainly not applied to any particular portion of the land offered for sale. The first time I ever heard of the trust deed to the premises in dispute was through my attorney, James K. Hines, of Sandersville; it was a short time previous to the bringing of the present suit.

4 Int'y. To the 4th direct int'y the witness, answering, saith: The premises now in controversy were embraced in the same levy with other lands, and Mrs. Riddle claimed the others, amounting to 3,000 acres, but did not claim what was sold. A claim was filed, in
218 due form, restraining the sale of this 3,000 acres under an alleged trust deed from Anderson Riddle to William C. Riddle, trustee, for Mrs. Seny Ann S. Riddle and her children. This 3,000 acres was distinct from the premises in dispute.

5th Int'y. To the 5th direct int'y the witness, answering, saith: I was present at the trial of said claim case and heard W. C. Riddle, the husband of Mrs. Seny Ann S. Riddle, testify. Thomas Spencer, the stenographic reporter, took down the testimony. I remember distinctly that Mr. Riddle only testified to an alleged trust deed from his father, Anderson Riddle, in favor of Mrs. Seny Ann S. Riddle, to 3,000 acres of land, none of which is embraced in the land now in controversy. He said nothing about any trust deed.

6th Int'y. To the 6th direct int'y the witness, answering, saith: The only conversation I ever had on the subject with said Simon Thomas was shortly after the trial upon the foreclosure of the mortgage, in 1876; it arose from an inquiry I made of him in reference to a rumor I had heard as to a trust deed to 3,000 acres of land from Anderson Riddle to W. C. Riddle, as trustee for Mrs. Seny Ann S. Riddle. He replied that he had never heard of such a deed. I never told Mr. Thomas that Mr. Riddle had told me of any trust deed, but remarked that I had heard Mr. Youngblood or some one else speak of it since the trial. I certainly never had any
219 conversation with Mr. Thomas about a trust deed to the premises now in controversy. No one was present during the conversation; the conversation was in Sandersville & many years after the mortgage upon the premises in dispute was made; nor did I ever at any time tell Mr. Thomas or anybody else that Riddle, the mortgagor, gave me any notice or told me of any trust claim or deed of any kind at any time, either before or after the mortgages or either of them was given.

Int'y 7. To the 7th direct int'y the witness, answering, saith: At the spring term, 1876, our firm obtained a decree in Washington superior court upon a foreclosure of the $90,000 mortgage for about $86,000. There was embraced in the proceeding to foreclose certain crop liens in our favor against said Riddle, where the prop-

erty levied upon by us had been replevined and security given. This was done by consent of all parties. The case was settled upon the basis of the instrument appended to these answers and marked Exhibit A. These crop liens amounted to about $18,000.

Int'y 8. To the 8th direct int'y the witness, answering, saith: The instrument hereto attached and marked Exhibit A is the original settlement referred to.

Cross-interrogatories:

1 X Int'y. To the first X int'y the witness, answering, saith: Yes.

2 X Int'y. To the second X int'y the witness, answering, saith: Yes.

3 X Int'y. To the third X int'y the witness, answering, saith: I have no distinct recollection of my evidence before said com.
220 It was in relation to a matter which concerned me personally but little, and I therefore did not charge my memory with the details. I cannot say that I testified to owning 10,000 acres of land in Washington Co., worth $100,000. I don't think I so testified.

4 X Int'y. To the 4th X int'y the witness, answering, saith: I don't think I did.

5 X Int'y. To the 5th X int'y the witness, answering, saith: I have looked at and carefully examined said printed slip, but I do not recognize it as reporting correctly my evidence before said com. One thing in connection with this examination did make an impression upon my mind, and that was the ridiculously incorrect report of my evidence which appeared in the Constitution next morning. I immediately called the attention of Mr. Miller, chairman of the com., to this fact, and that gentleman promised that I should have an opportunity of correcting the testimony before the com. This promise has never been fulfilled, and I am constrained to brand the report as it appeared in the Constitution as full of error and unworthy of credit. I do not blame the Constitution with these errors, but I incline to the belief that they printed what the com. gave them. I don't remember the date of my being before the com.

6 X Int'y. To the 6th X int'y the witness, answering, saith: About $21,000; I was the purchaser.

7 X Int'y. To the 7th X int'y the witness, answering, saith: I did not hear Mr. Gilmore make any statement at such sale about
221 the trust property. All that he said has been fully set out in answer to the 3rd direct int'y.

8 X Int'y. To the 8th X int'y the witness, answering, saith: I know nothing further in answer to this int'y.

B. J. WILSON.

Answered, sworn to, and subscribed before us this Aug. 30th, 1883.

MARSHALL J. CLARK,
Commissioner.
JOS. J. ECKFORD,
Commissioner.

NOTE.—The instrument hereto annexed and marked Exhibit A is the agreement referred to in the answers to the direct int'ys 7 & 8.

MARSHALL J. CLARK, *Com'r.*
JOS. J. ECKFORD, *Com'r.*

NOTE.—The erasures in lines 19 & 20 of page 2 and the interlineation between lines 21 & 22 on page 4 were made by the commissioners in the course of executing the int'ys.

MARSHALL J. CLARK,
Commissioner.
JOS. J. ECKFORD,
Commissioner.

EXHIBIT A.

In Washington Superior Court. March Term, 1876. In Equity.

W. C. RIDDLE *vs.* B. J. WILSON & Co.

& decree in favor of defendants.

The following settlement of the above case, so far as concerns the said Wm. C. Riddle, J. T. Youngblood, David Tanner, H. K. Newsome, Mark Newman, P. Happ, George W. Kelly, Sr., his securities upon replevin bonds and forthcoming bonds, and the said B. J. Wilson & Co., is hereby agreed upon as follows:

1st. The said decree is to stand as appears upon record, all conflicting claims to all the Riddle lands conveyed by the mort-
222 gage in the broadest sense to be abandoned and quit-claim deeds to be executed to said B. J. Wilson & Co. of such lands as have been conveyed to the said securities during the year 1876; also all claims to the perishable property on the place of every discription such as were turned over to the securities (save the immediate household & kitchen furniture of Mr. Riddle) to be abandoned & conveyed to said Wilson & Co.*

All opposition to the verdict of the jury, at law or equity, to be abandoned by dismissing mutually the motions for new trial in said case pending in said superior court by proper orders, and directions to be given for that purpose to the clerk of the superior court, and the securities for their release to pay the sum of three thousand dollars, with interest at the rate of seven per cent. per annum from the first day of June, 1876.

---

* Words "conveyed to said Wilson & Co." inserted before signing.

Attest:
C. C. PARSONS.
E. A. SULLIVAN,
N. P. & ex Officio J. P.

And it is further agreed upon the part of W. C. Riddle and the securities above named that the decree heretofore taken in this case be amended by the said several securities consenting to be made parties to said decree at the next term of the superior court, so as to carry out this agreement and to bind the said securities for the amount stated and the interest, and that the executions shall issue as against said Riddle for the amount of said decree and judgment at once,* and in accordance therewith a judgement & exe-
223 cution against said securities as soon as applied for by said B. J. Wilson & Co. or their attorneys as against said securities for the sum of three thousand dollars & interest, jointly and severally; this latter execution against the securities to be stayed till the first day of November next.

And it is further agreed in consideration of this settlement that the said B. J. Wilson & Co. is to allow or convey to said W. C. Riddle & wife a homestead exemption or life interest in one hundred acres of land, to embrace the dwelling-house, yard, garden, & orchard, where said Riddle now resides, the boundaries thereof to be designated by said B. J. Wilson; and the said securities further agree to deliver or cause to be delivered to the sheriff or other proper officer the six mules now on the premises and in possession of Riddle, Minor, and Henderson, which were covered by the mule mortgage, as the residue now remaining on hand, to be sold under the execution & judgement against Riddle upon the foreclosure of the mule mortgage, & as in satisfaction of their replevy and forthcoming bond to the sheriff.

This agreement is not to be construed to release James M. Minar or W. J. Henderson as co-principals with said Riddle on their joint notes and cross-liens from their liability to said B. J. Wilson & Company upon the judgements & decree; the said securities only to be released upon a faithful compliance with this agree-
224 ment; and it is further agreed that J. T. Youngblood, H. K. Newsome, and David Tanner, part of said securities, do further agree to pay, in addition to the above three thousand dollars & interest, the sum of five hundred dollars, to become due 1st day of December, 1876, to be secured by the notes of said parties, bearing interest from date at seven per cent., as a part of the settlement.

It is the understanding, spirit, and intention of this settlement that the securities hereinbefore named are to be entirely and absolutely released, upon compliance with this agreement, from all liability as securities of W. C. Riddle and W. C. Riddle & W. J. Henderson & W. C. Riddle and James M. Minar upon cross-liens, mortgages, or bonds arising under them.

---

* Words "at once" *and* interlined before signing & words "and said Riddle" erased before signing & letter "s" on word orchard erased before signing.

Attest:

C. C. PARSONS.
E. A. SULLIVAN,
N. P. & ex Officio J. P.

In witness whereof we have hereunto set our hands and affixed our seals as parties principals and securities this August the third day, A. D. eighteen hundred and seventy-six.

WM. C. RIDDLE. [L. S.]
J. T. YOUNGBLOOD. [L. S.]
DAVID TANNER. [L. S.]
H. K. NEWSOME. [L. S.]
M. NEWMAN. [L. S.]
GEO. W. KELLY. [L. S.]
——— ———. [L. S.]
——— ———. [L. S.]

B. J. WILSON & CO.,
By B. J. WILSON.

Signed & executed before us—
C. C. PARSONS.
E. A. SULLIVAN,
N. P. & Ex Officio J. P.

225 $500.00.

Received, Sandersville, Ga., Aug. 3rd, 1876, five hundred dollars by sight draft on L. S. Gilmartin, & signed by P. Happ & Son, as a credit on the within three thousand dollars.

B. J. WILSON & CO.,
By B. J. WILSON.

Endorsements on envelope: I, Joseph J. Eckford, one of the commissioners on the within commission, do hereby certify that I have this day deposited in the post office at Atlanta, Ga., the inclosed commission and depositions for transmission by mail to Savannah, Ga., this 30th day of August, 1883. Jos. J. Eckford, commissioner. Jos. J. Eckford, com'r. (Seal.) Marshall J. Clark, com'r. (Seal.) Post office, Atlanta, Ga. Received this package from Jos. J. Eckford, to be transmitted by mail to Savannah, Ga., this 30th day of Aug., 1883. B. H. Camp, P. O. inspector, acting postmaster. Received, in due course of mail, this 31st day of Aug., 1883. L. McLaws, P. M., per A. C. C. Received by mail and filed this 31st day of Aug., 1883. M. Erwin, dep'y clerk.

Upon application of counsel for plaintiffs, ordered that the within deposition be opened in open court this Nov. 28th, 1883.

JAS. W. LOCKE, *Judge.*

226 *Further Testimony Offered in Evidence by Defendant.*

In the Circuit Court of the United States for the Southern District of Georgia.

WILLIAM C. RIDDLE, Trustee of Seny Ann S. Riddle, *et al.*

vs.

BENJAMIN J. WILSON.

Bill for relief, &c.

Interrogations to be propounded to Thomas Spencer, a material witness for the defendant in the above-stated cause and who resides in the county of Hall, State of Georgia:

Int. 1st. Do you know the parties or any of them?

Int. 2d. Say whether you have been a stenographic reporter, and, if so, whether you ever rendered service in that capacity in Washington superior court, and, if so, when and under what circumstances and by whose appointment or procurement.

Int. 3d. Say whether or not you reported the evidence as given in in that court by William C. Riddle in a certain case there tried; if so, what case was it? If you cannot name all the parties to it, mention as many as you can, and otherwise identify the case distinctly, if in your power. Say also whether or not Benjamin J. Wilson, the defendant in this present cause, was present at that trial.

Int. 4th. Annex your report of Riddle's evidence or cause it to be annexed to your answers hereto. What is wanted is this original report. If it has been lost or destroyed, or if for any reason it cannot be annexed and returned with your answers, state the
227 fact in full so that its absence may — legally accounted for, and in that event furnish a specimen of the characters in which it was written.

Int. 5th. Did you or not ever render the original report into writing of the common or ordinary characters; if so, when, and what can you say of the accuracy, fullness, and fidelity of that rendering? Annex or cause to be annexed to your answers that rendering also, and let it be returned as a part of your evidence—both it and the original report. Should the rendering heretofore made (if any) be lost or destroyed make another and send it up; let it be exact, full, and accurate in every respect.

Int. 6th. Explain thoroughly the circumstances of making the original report in so far as they will tend to throw light on its accuracy and completeness; say whether the evidence was taken down at the very time it was delivered or at a different time; also whether it was reported word for word or only the substance, &c., &c.

Int. 7th. How long have you been a stenographer and how long have you acted as a stenographic reporter? Are you an expert in that profession or business?

Int. 8th. Did you report the evidence of one Simon (or Simon W.) Thomas in the same case and at the same trial? If so, answer the same questions as to his evidence which have been asked you about Riddle's.

LANIER & ANDERSON,
Att'ys for Defendant.

228 Cross-interrogatories:

1st. Cross. If you say you took down the evidence in any case in the superior court of Washington county between B. J. Wilson & Mrs. Seny Ann S. Riddle, state whether or not B. J. Wilson testified in said case, and if you say that he did attach the record of his evidence to your answers; attach the original, if written in short-hand, and also the copy written out in long hand; attach the whole of Wilson's testimony, original, if you have it; if you have not, attach any copy that you may have, accounting at the same time for the loss of the original.

E. S. LANGMADE,
O. H. ROGERS,
Att'ys for Pl't'ffs'.

Endorsements: In the United States circuit court for the southern district of Georgia. Wm. C. Riddle, trustee of Seany Ann S. Riddle, *et al. vs.* Benj. J. Wilson. In equity. Interrogations for Thomas Spencer. Filed in clerk's office Aug. 23d, 1883. Marion Erwin, dep'y clerk C. C. Due and legal service of these interrogatories acknowledged. Copy filing and notice of filing waived. Let commission issue instanter this 21st Aug., 1883. O. H. Rogers, att'y for pl'ffs. Filed Aug. 23, 1883. M. Erwin, dep'y clerk.

229 *Commission to Examine Witnesses.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

In the Circuit Court of the United States for the Southern District of Georgia.

To Claud Estes and L. D. Puckett, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause, pending and to be tried in the said court, wherein W. C. Riddle, trustee, is complainant and Benj. J. Wilson is defendant, as well on the part of the defendant as on the part of the said plaintiff or either of them.

And it is required of you (or any two or more of you) that on certain days and at certain places, by you to be appointed for that purpose, you do cause the said Thomas Spencer, of Hall county, Georgia, a material witness on part of the defendant, to come before you, and then and there examine him upon the said interrogatories on his corporal oath first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such his examination, and reduce it into writing; and when you shall have so taken it
230 you are to send the same to the clerk of the circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you) distinctly and plainly set, together with the said

interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed, and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this 23d day of August, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and eighth year of American Independence.

[Seal of the Court.]

MARION ERWIN,
Dep'ty Clerk C. C.

231 SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and dipositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

CLAUD ESTES.
L. D. PUCKETT.

Subscribed and sworn to before me this 8th day of Sept., 1883.
SAMUEL C. DUNLOP,
U. S. C. C. Comm'r.

Endorsements: In the circuit court of the United States for the southern district of Georgia, eastern division. Wm. C. Riddle, trustee, compl't, *vs.* B. J. Wilson, d'f't. Commission to examine witnesses on the part of the defendant for the examination of Thomas Spencer, Hall Co., Ga.

232 *Deposition of Thomas Spencer, Witness on Part of Defendant.*

In the Circuit Court of the United States for the Southern District of Georgia. In Equity.

WILLIAM C. RIDDLE, Trustee, *et al. vs.* BENJAMIN J. WILSON.

Bill for relief, &c.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners — issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Gainesville, Hall county, Georgia, in the law office of Claud Estes, on this (8th) eighth day of September, 1883.

THOMAS SPENCER, aged 67 years, being duly sworn, answers and deposes as follows, to wit:

To the first direct interrogatory the witness, answering, saith: I know Benj. J. Wilson well; I know Wm. C. Riddle only incidentally, and also Mrs. Riddle incidentally.

To the second direct interrogatory the witness, answering, saith: I have been a stenographic reporter. I did render service in that capacity in Washington superior court, Judge Herschel V. Johnson presiding, in September, 1877. I was at that time the official reporter for the Macon circuit, but was engaged to take down testimony in criminal cases in Jefferson and Washington counties, in the middle circuit, and, being present at the September term of Washington superior court, 1877, I was engaged by Benj. J. Wilson or his counsel, with the approval of the presiding judge, to take
233 down the testimony in a civil case pending in Washington superior court.

To the third direct interrogatory the witness, answering, saith: I did report the evidence of Wm. C. Riddle in a certain case then tried. It was the case of B. J. Wilson and Co. *vs.* Wm. C. Riddle and Seny Ann Riddle, claimant—a claim case. Benjamin J. Wilson, the defendant in the present cause, was present at that trial.

To the fourth direct interrogatory the witness, answering, saith: My report of Riddle's evidence cannot be annexed to my answers hereto, for the reason that such report is contained in a book in which I took down the evidence in said case. In the same book there is taken down the evidence in other cases, both criminal and civil, and in places on one side of a leaf is the evidence taken down in the Wilson-Riddle case, and on the other side of the same leaf is the evidence in some other case. The book in which the evidence was taken down is my own private property and is valuable to me and I cannot mutilate it by tearing out the leaves, and, besides, if I should tear them out, on one side of some of them is evidence taken in other cases, and would leave my report in the other cases mutilated and incomplete. I furnish herewith, on a sheet of legal cap paper, marked Exhibit "A" and signed by myself, a specimen of

the characters in which the evidence of Wm. C. Riddle *were* written on said trial.

To the fifth direct interrogatory the witness, answering,
234 saith: I did render the original report into writing into English, the common or ordinary form, immediately after the trial of said case; that rendering was accurate and was of all the testimony of all the witnesses in the case, including the rulings of the court, and was a faithful *verbatim* rendering, to the best of my skill and ability.

The rendering of my report of said testimony referred to in this, my answer to the 5th direct interrogatory, was by me, upon its completion, filed with the clerk of the superior court of Washington county, S. M. Northington. I have not seen that rendering since I left it with Mr. Northington; I don't know where it is; it is not in my power, custody, or control. I made another rendering or translation of the entire evidence, which I furnished to Benj. J. Wilson; this last rendering was made Oct. 29, 1879, at the request of Mr. Wilson.

In obedience to the request contained in the fifth direct interrogatory, I have made another rendering from my original notes of the evidence of Wm. C. Riddle, the same being a full, accurate, and faithful and *verbatim* rendering of his entire evidence on said trial, there being seven pages and eight lines of the same written by me on legal cap paper, each page numbered at the top, each page of said rendering of Wm. C. Riddle's evidence being signed by me on the left margin; and my certificate, attested by Claud Estes and L. D. Puckett, is attached and written on the 8th page of same
235 and signed by me and dated Sept. 8th, 1883, marked Exhibit "B."

To the sixth direct interrogatory the witness, answering, saith: The original report of the evidence of Wm. C. Riddle and the other witnesses in said case was taken down by me word for word as each testified in open court. I sat at a convenient place in the court-room during said trial, and caught distinctly and sat down accurately each word that each witness testified. I had no interest in the case. I simply was a sworn official to take down the evidence, which I did.

To the seventh direct interrogatory the witness, answering, saith: I have been a stenographer for about 48 years, and I was a stenographic reporter from 1871 to about 1881. First I was official reporter for the Atlanta circuit and next for the Macon circuit. I am an expert in that profession or business, so far as the system I use is concerned.

To the eighth direct interrogatory the witness, answering, saith: I did report the evidence of one Simon Thomas in the same case and at the same trial. For the same reasons given by me in my answer to the fourth direct interrogatory I cannot attach the original report of the evidence of Simon Thomas, but I do attach to and embrace in my answer a full, accurate, faithful, and *verbatim* rendering in English from my original notes — the evidence of said Simon Thomas. The said rendering contains exactly what said

Simon Thomas swore on said trial. Said rendering is writ-
236 ten by me on legal cap paper and is one page and 12 lines, numbered 1 & 2. To better identify said attached rendering I have signed my name on the left margin of each page, and have appended and signed a certificate on page 2, which is attested by Claud Estes and L. D. Puckett, commissioners. I also attach to my answers a specimen of the characters in which the original notes of the evidence of said Simon Thomas is written down, marked Exhibit "D" and signed by me below said characters on same sheet or page.

Answers to Cross-Interrogatories.

To the first cross-interrogatory the witness, answering, saith: B. J. Wilson did testify in said case. For the reasons given in my answer to the fourth direct interrogatory I cannot attach the original in short-hand of the evidence of B. J. Wilson, but I do attach to and embrace in my answer to the cross-interrogatories a reading or translation of the evidence of B. J. Wilson on said trial. The said rendering in English contains a full, accurate, faithful, and *verbatim* report of the testimony of said B. J. Wilson on said trial. The better to identify the attached rendering of the evidence of said B. J. Wilson I will say there are seven pages of it, numbered 1 to 7, written by me on legal cap paper, and I have signed my name on the left margin of each page and have written and signed a cer-
237 tificate at the bottom of said seven pages, which is attested by Claud Estes & L. D. Puckett, commissioners.

THOMAS SPENCER.

Answered, sworn to, and subscribed before us, in our presence, this September 8th, 1883.

CLAUD ESTES, [L. S.]
Commissioner.
LESTER D. PUCKETT, [L. S.]
Commissioner.

GEORGIA, *Hall County:*

We, the commissioners who executed these interrogatories, do certify that we had no clerk, but that Claud Estes, one of the commissioners, acted in that capacity after taking the oath prescribed for a clerk, this Sept. 8th, 1883.

CLAUD ESTES, [L. S.]
Comm'r.
L. D. PUCKETT, [L. S.]
Comm'r.

Here follows Exhibit "A," contain'g nine lines of stenographic characters, beginning with the name of Wm. C. Riddle and ending with the name of Thomas Spencer, both in the handwriting of the said Spencer.

EXHIBIT "B."

WILLIAM C. RIDDLE sworn (for defence).

Examined by Judge TWIGGS:

Question. (Paper handed to witness.) Do you recognize that deed?
Answer. Yes; I have seen it before.
Question. Do you know the property it conveyed?
Answer. Yes; I have part of it.
Question. In what capacity do you hold it?
Answer. As trustee for my wife.
Question. Who was in possession of that property when
238 the deed was executed?
Answer. I had.
Question. Under what title?
Answer. Under a trust deed, for my wife and children.
Question. When you were in possession what control had Anderson Riddle over it?
Answer. He had none; I had absolute control.
Question. How was Anderson Riddle supported?
Answer. When his supplies were out I sent some over to him.
Question. What became of the proceeds of the place?
Answer. I used them myself.
Question. What title did you hold that land by?
Answer. A deed of trust to my wife and children.
Question. Had you ever any other title but this?
Answer. I never had.
Question. Was the deed made by Anderson Riddle ever delivered?
Answer. Yes; it was delivered to Mrs. Riddle.
Question. By whom?
Answer. By my father to Mrs. Riddle, in presence of Aaron Brantly. He carried it and read it. I assisted him in reading it.
Question. Who has been in possession of that land since?
Answer. I have, as trustee for Mrs. Riddle, managing it.

Cross-examination by Judge MCKAY:

Question. Did your father continue to live on the place?
Answer. Yes; part of the time.
Question. He did not change his residence?
Answer. Not right at that time; he kept his bed and things there most of the time.
Question. Did he come to your home awhile before his death?
239 Answer. He stayed over awhile, but the children annoyed him.
Question. Where did he stay while he lived?
Answer. He lived on the place.
Question. Where he always lived?
Answer. Yes; till a short time before his death.

Question. He continued to live there from time he made deed to you till his death?

Answer. Yes; he continued to live there after he made the deed.

Question. Did you not always openly claim this place as your own?

Answer. No, sir.

Question. Why did you not give this land in for taxes as trustee for your wife?

Answer. I just gave it in in my own name.

Question. In 1849?

Answer. I think so.

Question. In 1850?

Answer. I think so.

Question. Did your father give it in?

Answer. I don't recollect.

Question. Don't you know your father gave it in after deed was made?

Answer. I do not; I don't recollect.

Question. You never gave it in as trustee?

Answer. I don't think I ever gave returns as trustee.

Question. Did you not say to or in presence of W. P. Smith, in last year, that you intended to keep this thing concealed about this deed?

Answer. No, sir; I never did.

240 Question. Did you not say to him or in his presence that you were pu-posing to keep this trust deed concealed and take your chances, or something like that?

Answer. I did not, sir.

Question. At the time this deed was made had not your father parted from his wife?

Answer. Yes; I think he had.

Question. Did she ever sue for a divorce?

Answer. Well, they commenced a case, I think; I don't recollect what time.

Question. When did they part?

Answer. I don't recollect.

(Here court adjourned, & on reassembling W. C. RIDDLE was re-introduced.)

Question on cross-examination. You said after making of this deed your father was dependent upon you; he had no property.

Answer. He had some; he had a horse & buggy, a watch, and some land.

Question. Did you and he farm in partnership in 1854 to 1860?

Answer. We did not, sir.

Question. What was the condition of your father's health in 1854 to 1861? Who gave in his taxes?

Answer. I generally done it.

Question. Did you attend to your father's business before this deed was made?

Answer. No, sir; he had his own overseer.

Question. Who saw the deed made?

Answer. John Harrison, I think; he is living now in lower part of this county.

Question. Did you say your father did not change his residence after this deed was made?

241 Answer. No, sir (he did not).

Question. What negroes did your father own at the time this deed was made? Did he own a family called Gordon negroes?

Answer. They were not called Gordon negroes then; they took that name afterwards; a portion of them kept his house.

Question. A large portion remained till they were set free?

Answer. Yes; the larger portion did; they were negroes included in this deed.

Question. Was there a negroe woman named Dilsey?

Answer. Yes, sir; I don't know what became of her.

Question. Until she was free where did she stay?

Answer. She worked on the farm; she lived on the place father lived on.

Question. Till she was free?

Answer. Well, off and on she did. She was mother of some of these negroes; F. was a blacksmith; he was Dilsey's son; I don't recollect where he lived.

Question. Was Tobe one of these negroes?

Answer. Yes; he lived part of the time at father's place, part at mine.

Question. Where was his home?

Answer. I think at father's place; I don't recollect about Seeny; I think Warf staid at my place; Morgan staid at father's place; S. was there; Mitchel staid at father's; Redding staid there; Jeff staid there; Sonny staid at my place; Jim staid at father's place; Miles staid there, too; Isam staid part of his time there and part

242 with me; none were kept there particularly; they did not all continue to live at father's place.

Question. Did not all but one or two remain on the place?

Answer. They staid there; I worked them; I put them to plow; there was a man — name of Sandy, a carriage driver; he staid at my place, and a girl — name of Rhoda staid at my place.

Question. You say your father owned a little land; what land?

Answer. Part of fourteen hundred acres, open land.

Question. What was it worth in 1848?

Answer. I suppose it was worth one and a half to two dollars an acre—that is, the land mentioned in the deed bounding this tract; many old flats and claims came in.

Question. What was the land worth at that time?

Answer. I said one & a half to three dollars, lands mentioned in the deed, as bounding this tract in dispute.

Question. You said there were many claims against this land?

Answer. Yes; taken up in little plats.

Question. What was your father's interest in the whole place worth?

Answer. I suppose some twelve hundred dollars.

Redirect examination:

Question. Did you say a large portion of the negroes staid where your father was staying?

Answer. Yes, sir; my father's place was about ¾ of mile from my place.

Question. Was the place your father lived at included in the trust settlement?

Answer. Yes, sir.

Question. Who controlled the negroes after the trust deed was made?

243 Answer. I did, sir; I took absolute control.

Question. Why did they remain on the place where your father lived?

Answer. They had the buildings there; that was why they remained there.

Question. Where was the stock they worked?

Answer. On my place.

Question. Did you say these were the Gordon negroes?

Answer. No; not all the Gordon negroes; I think after freedom they took that name; the Gordon negroes were a different family altogether.

Question. Did Mrs. Anderson Riddle have a life estate?

Answer. Yes; that was the Gordon negroes, and they assumed his name afterwards.

W. C. RIDDLE again introduced for defence:

Question by Judge TWIGGS. Did you ever have a conversation with Mr. Wilson in Savannah with reference to this trust estate before the mortgage was made?

Answer. I did; he spoke about wanting papers when I wanted to get supplies, and I agreed to mortgage eight thousand acres of land, and I said there was a trust deed on three thousand acres, but the papers were destroyed and I did not expect they would be established. He said that would make no difference he would settle that up, it should not bother me. He said he would settle it up and there would be no trouble; that was before the first mortgage was given, and before this present mortgage; that took place in Savannah.

Cross-examination by Judge McCOY:

244 Question. Was anybody there but Wilson and you at this conversation?

Answer. No, sir.

Question. Where did it occur?

Answer. In Savannah, in his office.

Question. How long before the mortgage?

Answer. I think it was in 1867 the conversation took place, three years before the mortgage was made.

Question. What was it you told Mr. Wilson?

Answer. I said on a portion of the land there was a trust deed; at the time I was giving him some other papers; that was not at the time this mortgage was made.

Question. Do you remember that soon after the trial of the mortgage case between you & Wilson that you had a settlement with him about securities and carrying the case to the supreme court?

Answer. Yes; I did not consult my wife about that settlement; I told her they were trying to make a compromise.

Question. Did you consult her about the terms of the compromise?

Answer. Youngblood went to see Wilson to see what terms we could make; Youngblood came back and said that Wilson said he would be very liberal.

Question. Had you consultation with your wife about it?

Answer. I did speak to her about it. I said we were going to try for a compromise; I told her about compromise of a hundred acres; she said she would have nothing of it.

Question. Still you made the settlement?

Answer. When I came back the securities urged me so that I sanctioned it, when my wife said she would not have it.

Question. Did you notify Mr. Wilson then of that fact?

245 Answer. I don't know that I did.

Question. Did your wife know of the settlement?

Answer. She knew we were trying to compromise; she heard what Mr. Wilson's terms were.

Redirect examination:

Question. Did Mrs. Riddle know that a compromise had been effected?

Answer. Well, she heard it, but said she would not have anything to do with it. I did not tell her it was effected.

Recross-examination:

—. I never told Mrs. Riddle that a statement was effected.

Question. Did you tell her the case was stopped?

Answer. No, sir; I don't think she knew that. When she heard about the hundred acres she said she would have nothing to do with it.

Question. Did you not tell her about a house being built on another place?

Answer. That was talked of here, but not to her.

Question. Did you tell Mr. Wilson that you had consulted her?

Answer. No, sir; not that she would not agree.

(The last question & answer objected to & withdrawn.)

GEORGIA, *Hall County:*

I, Thomas Spencer, hereby certify that the above and foregoing and attached seven pages and eight lines is a full, accurate, faithful, and *verbatim* rendering from my original short-hand notes of the evi-

dence of William C. Riddle taken down by me on the trial of a case in Washington superior court in September, 1877, of B. J. Wilson & Co. *versus* William C. Riddle & Seny Ann Riddle, claimant.

September 8th, 1883.

THOMAS SPENCER,
Stenographer.

Attested by—
CLAUD ESTES, *Com'r.* [L. S.]
LESTER D. PUCKETT, *Com'r.* [L. S.]

246 EXHIBIT "C."

SIMON THOMAS sworn:

Question. Did you ever have a conversation with B. J. Wilson in reference to these trust papers?

Answer. Yes, sir.

Question. Where?

Answer. In Col. Worthing's office; there was no one present but Col. Wilson & myself; that was at the September term, 1876, of this court.

Question. What were you talking about?

Answer. Of this trust deed.

Question. What did Col. Wilson say about the trust estate?

Answer. I don't remember that he spoke of a trust deed; he said Riddle had told him there was an old deed that had been destroyed to some of this land, but that it was destroyed and he did not think it ever would be established.

Question. What were you talking about at the time?

Answer. He was speaking of the trust deed.

Question. In that conversation what did Wilson state to you?

Answer. I don't remember further than he said what Riddle said, there had been an old deed to a portion of this land; that it had been destroyed and he did not apprehend any trouble from it; Riddle said he did not think there ever would be any trouble.

Cross-examination:

Question. Was not this conversation a year ago?

Answer. Yes; last September, after this claim was made.

Question. Was not this what Col. Wilson said, "Youngblood had told him about some old papers before the settlement?"

247 Answer. No; I don't recollect that; there was no such language that I remember. I don't think Youngblood was mentioned; this was after this claim was made. Wilson did not tell me when Riddle told him about the old deed.

Question. Were you present at this compromise?

Answer. No, sir; I was not in town. I heard something of it. I heard of the terms after they had broken up.

Question. Did you not hear of it before?

Answer. No, sir; it was in progress before I knew anything of it.

Question. What kin are you to W. C. Riddle?

Answer. Son-in-law.
Question. Is your wife on of the beneficiaries of this deed?
Answer. Yes, sir.

GEORGIA, *Hall County:*

I, Thomas Spencer, hereby certify that the above and foregoing one page and twelve lines is a full, accurate, faithful, and *verbatim* rendering from my original short-hand notes of the evidence of Simon Thomas taken down by me on the trial of a case in Washington county superior court, in September, 1877, of B. J. Wilson & Co. *vs.* Wm. C. Riddle and Seeny Ann Riddle, claimant.
September 8th, 1883.

THOMAS SPENCER,
Stenographer.

Attested by—
CLAUD ESTES, *Com'r.* [L. S.]
LESTER D. PUCKETT, *Com'r.* [L. S.]

248 EXHIBIT "D."

Here follows eleven lines of short-hand characters commencing with "Simon Thoms" and signed by Thomas Spencer.

EXHIBIT "E."

B. J. WILSON examined by Judge McCOY:

Question. Mr. Wilson, state what you know as to who was in possession of the lands at the date of that mortgage on May 5th, 1870.
Answer. Mr. William C. Riddle.
Question. State whether you have ever been on the place before that.
Answer. Yes, sir; I have been on it frequently.
Question. How long before that time?
Answer. The first of my being on that place of Riddle's was 1866, and at various times I have been on —.
Question. Did you ever hear him claim them as his own?
Answer. Yes, sir; he spoke of his possessions there.
Question. Had he ever acted in any way previously to this (mortgage) in any transactions with you by which he treated these lands as his own?
Answer. In 1868 he gave a mortgage to Wilkinson and Wilson. I was a partner in the firm. That mortgage was for eight thousand acres—a portion of these same lands.
Question. Did that include this particular land in dispute?
Answer. Yes, sir; it embraced the land in dispute.
Question. What became of that mortgage?
249 Answer. It was returned to them when this was given or before; I don't remember now, but it was cancelled and returned. It is not in our possession.
Question. At the time of that mortgage did you advance any moneys?

Answer. Yes, sir; large amounts, based on the faith of this last mortgage.

Question. How large amounts?

Answer. I am not sure how much. He owed us some at the time—my impression is somewhere between sixty thousand & one hundred and nineteen thousand dollars. The whole advances went over one hundred & twenty thousand dollars.

Question. Who was in possession of this land? Who lived on it at the time of the sale?

Answer. I understood him to be still in possession. I did not know of any change from the date of the mortgage. I had some connection with it as late as '71. I still found him in possession.

Reintroduced:

Question. You said Riddle told you they were his lands. How did that come up that he said so?

Answer. He was buying land, &c.

(This answer and question were withdrawn.)

(After the examination of Simon Thomas, B. J. Wilson was reintroduced in rebuttal.)

Question. Did you ever have a conversation with Mr. Riddle before the mortgage was made in which he said there was a deed of trust to a portion of this land?

250 Answer. I have not the slightest recollection of such a conversation. I was always under the impression that they were his lands—he was in possession. He talked to me a good deal about his lands and what he was going to do. My impression was always strong that he was worth the mortgage. The mortgage was for ninety thousand dollars.

Question. Would this land have been sufficient security for that amount if three thousand acres had been taken out of it?

Answer. I don't think it would have been sufficient security if three thousand acres had been taken out of it. I would not have taken the mortgage with that understanding. I should not have considered it sufficient security with that out.

Question. Do you recollect this conversation with Simon Thomas?

Answer. I had a good deal of conversation with Thomas about these things, but I have no recollection of telling what Mr. Riddle said. I was telling of a claim that Youngblood told me about—about a claim to release securities. It is possible I mentioned to him there was such a rumor. I think I was asking Mr. Thomas about it; that is my recollection. That was about the time of the settlement—I think the latter part of 1876.

Question. When did you first know of this trust deed?

Answer. About the time after we got the first verdict. That was in 1876. That was — first information I had about a trust

251 deed. I asked Thomas what he knew about it. He said he never heard of such a thing. I told him what Youngblood had told me. I said I hardly thought there was anything in it. I

— sure Mr. Thomas mentioned it to me, as if he thought Mr. Riddle had told me, because Mr. Riddle did not tell me.

Question. You speak of hearing of old deeds in 1876; deeds to who?

Answer. I think it was at that term. I heard that the deed was to Mrs. Riddle and her children; that was after the verdict in 1876.

Question. In your conversation with Mr. Thomas about that time, about old deed, what information did you refer to?

Answer. I certainly referred to a rumor I got from Youngblood and others that there was such claim; I don't remember exactly when, but it was some time after the verdict that I heard it.

Question. At the time of this settlement—when was that?

Answer. I don't remember the precise date; I should know the paper; it was after the verdict; I don't remember the date. Mr. Riddle never said anything to me about it (trust deed) that I recollect of at all, at any time.

Question. What old papers did Youngblood speak of?

Answer. No paper at all, but a claim by Mrs. Riddle in some way; I paid little attention to it, and it is my recollection that Youngblood thought there was nothing in it.

Question. How did you come to make that settlement?

Answer. Under the impression that there was nothing in it.

Question. Was anything said to you at the time of settle-
252 ment about old papers?

Answer. No; only that they would obtain all claims. I looked on that as one of the claims; I did not think there was anything in it, but I covered it in the settlement as one of the claims that would be obtained.

Question. When did you first get information about it?

Answer. It could not be long before the settlement between two terms of court; the settlement could not have been more than a month after the verdict.

Cross-examination by Judge MONTGOMERY:

Question. When did you first commence dealing with Mr. Riddle?

Answer. I think in 1866.

Question. How extensive were your dealings at that period?

Answer. Very small; I think I advanced him two thousand dollars in 1866, for which he agreed to ship cotton; our dealings were small for some years—small comparatively; I don't remember how much.

Question. When were the first large transactions in connection with a mortgage?

Answer. In the year previous, in 1869; I know that year we had large transactions; in the winter of 1869—1870; there were large transactions prior to the mortgage; the chief business was transacted in the winter, and these transactions of 1869 may run into 1870.

Question. What time in 1866 did you begin dealing with Mr. Riddle?

253 Answer. It might be latter part of summer or in fall.

Question. Whatever papers passed between you, including this mortgage, were collateral, and others were to be made, were they not?

Answer. Made and to be made; some had been made and others were to be made in all these transactions.

Question. You made advances on these papers as collateral security?

Answer. Yes, sir.

By Judge TWIGGS:

Question. Did you say you had no recollection of such a conversation as Mr. Riddle related?

Answer. No, sir; none in the world.

Question. Will you swear you never did have such a conversation?

Answer. No; I have no recollection of it, but the impression on my mind was the very reverse, and I made these large advances on what I believed good security, and I don't see how I could have such a conversation.

Question. Will you swear you did not have such a conversation?

Answer. If I have to swear either way I will swear we did not; it did not occur, to my recollection.

Question. May such a conversation not have occurred?

Answer. It did not occur, according to my recollection; I don't remember it; it did not occur, according to my recollection; according to my recollection, I did not have any such conversation.

Question. In the conversation with Thomas you don't
254 recollect all that was said?

Answer. No, sir; but I don't think I mentioned Riddle's name at all; that is my recollection—that I did not tell him that Riddle told me, because Riddle did not tell me.

Question. When the first proposition was made between you and Riddle to mortgage this land, in that conversation did not Mr. Riddle mention this trust deed to a portion of this land?

Answer. I don't recollect any conversation when Mr. Riddle said there was a trust deed conveying three thousand acres of this land for his wife and children, nor any conversation that way.

Redirect examination:

Question. What do you mean when you say you have no recollection of any such conversation?

Answer. I mean to say there was no such conversation. I don't — it possible the thing could have occurred. I looked on him as wealthy. I advanced him two thousand dollars in cash.

Question. When he made this mortgage had you or not any information of any trust deed or claim of anybody to this land?

Answer. When he made this mortgage I never had any information of any claim by anybody, directly or indirectly.

Question. If you had had such information what would you have done?

Answer. I most certainly would not have advanced him the money I did.

Recross-examination:

255 Question. In the conversation with Youngblood did you say anything to him about this trust property?

Answer. No, sir; only what occurred at the time he came to see me; we spoke of a rumor; I don't know who mentioned it first; possibly I mentioned it first, because I had talked with Col. Worthing; that was after the verdict in the big case, while the motion for new trial was pending; I know it was not considered anything by him; that was the impression left on my mind.

Redirect examination:

I think litigation commenced latter part of 1870.

Question. How long did it continue?

Answer. I suppose it is not ended yet. We got a judgment in 1876.

Question. During that time what information had you of this claim?

Answer. None in the world till we got a verdict in the case; I have no recollection how I first heard of it; I think it possible Col. Worthing had written me; it is possible I may have mentioned it to Mr. Youngblood, and I could find no one till after the trial that ever heard of it; first I heard of any one knowing it positively was on the stand.

Question. When you first went into that neighborhood did you see old Mr. Riddle?

Answer. Yes; I never saw him but once.

Question. Was anything said to you by Anderson M. Riddle as to who would be owners of the land at his death?

Answer. I don't remember any particular conversation be-
256 tween us; there was a general conversation with Mr. W. C. Riddle.

GEORGIA, *Hall County:*

I, Thomas Spencer, hereby certify that the above and foregoing and attached seven pages is a full, accurate, and faithful and *verbatim* rendering of my original short-hand notes of the evidence of Benjamin J. Wilson taken down by me on the trial of a case in Washington county superior court in September, 1877, of B. J. Wilson & Co. *vs.* Wm. C. Riddle & Seny Ann Riddle, claimant.

Sept'r 8th, 1883.

THOMAS SPENCER,
Stenographer.

Attested by—
CLAUD ESTES, *Com'r.* [L. S.]
LESTER D. PUCKETT. [L. S.]

Endorsements on envelope: I, Claud Estes, one of the commissioners on the within commission, do hereby certify that I have this

day deposited in the post office at Gainesville, Ga., the enclosed commission and depositions for transmission by mail to Savannah, Georgia, this 8th day of September, 1883. Claud Estes, commissioner. Claud Estes, com'r. (L. S.) Lester D. Puckett, com'r. (L. S.) Post office, Gainesville, Ga. Received this package from Claud Estes, to be transmitted by mail to Savannah, Ga., this 8th day of Sept., 1883. P. F. Lawshe, postmaster. Post office, Savannah, Ga. Received this package by due course of mail this 10th day of Sept., 1883. L. McClaws, J. Received by mail and filed this 10th day of September, 1883. M. Erwin, clerk. Upon application of counsel for plaintiff-, ordered that the within deposition be opened in open court this Nov. 28th, 1883. Jas. W. Locke, judge.

Notice to Complainants of Examination of Witnesses.

In 5th Circuit Court of U. S. for the Southern District of Georgia.
In Equity.

W. C. RIDDLE, Trustee for Seany Ann Riddle, *et al.*, Complainants,
vs.
BENJ. J. WILSON, Defendant.

257 Further testimony on part of defendants.

To the complainants or their solicitors:

Take notice that we will examine S. Truluck, of Riddleville, Washington county, Ga.; J. Ben. Wilson, of Atlanta, Ga.; J. M. Bryan, of Riddleville, Washington county, Georgia, and F. M. Arnan, of Sandersville, Washington county, Georgia, as witnesses for the defendant in the above-stated case on the 28th day of August, 1883, commencing at ten o'clock a. m. and continuing from day to day until their examinations are finished, before L. H. De Montmollin, Esq., one of the examiners of said court, at his office, in the city of Savannah, Ga., this 16th day — Aug., 1883.

LANIER & ANDERSON,
L. E. BLECKLEY,
JAMES K. HINES,
Sol's for Def't.

Endorsements: In the 5th circuit court of the U. S. for southern district of Ga. Wm. C. Riddle, trustee for Seany Ann Riddle, *et al.* *vs.* Benj. J. Wilson. In equity, &c. Notice to complainants of examination of witnesses before examiner. Lanier & Anderson, L. E. Bleckley, James K. Hines, sol's for defendants. Due & legal service of within notice acknowledged and copy thus received this 16 Aug., 1883. O. H. Rogers, pl'ffs' att'y.

258 U. S. A., *So. Dist Ga., E. D.:*

WM. C. RIDDLE, Trustee, &c., *vs.* B. J. WILSON.

Pursuant to the annexed notice, with acknowledgment of service duly endorsed thereon, I have at the time and place therein specified, in the presence of counsel representing and appearing for the

respective parties to said controversy, —, and, after having duly enquired of said counsel so appearing concerning their readiness to proceed with the examination of said witnesses, and the answers being in the affirmative, I did thereupon proceed with said examination as follows:

Deposition of Sylvanus Truluck, Witness for Defendant.

SYLVANUS TRULUCK, sworn on behalf of the defendant, B. J. Wilson, says:

I live in Riddleville, Washington county, Ga.

Deed here shown witness, attached as exhibit to depositions of Ira Walden and E. S. Langmade, of *fi. fa.*, in U. S. cir. c't, in case of Seny Ann Riddle *et al.* vs. B. J. Wilson, said int'ys or deposition- being marked "Filed Sept. 7th, 1882. W. M. Heyward, dep. cl'k."

Witness says: I have examined the deed carefully; I have seen it before; I wrote that deed probably in the spring of 1881, I think. This deed was not written on April 23d, 1853. Mr. W. G. Bryan got me to write this deed. When Mr. Bryan came to me he
259 told me he wanted me to write a deed, and brought me a copy of a deed similar to that, the same as that, but without any signatures; and he told me he wanted me to make the handwriting of the deed to be written by me as nearly like the handwriting of the copy he brought me as possible; and he (Mr. Bryan) at the same time gave me a piece of old blue paper on which to write it, and which is the same paper as that now attached to the interrogatories. Mr. Bryan also gave me some pens and a bottle of pale ink. Mr. Bryan told me that Mr. Minar wanted him to write the deed, and that he (Minar) wanted the handwriting copied as near as possible. The paper upon which the deed was written, and which was given me by Mr. Bryan, was not then torn as it now is. The sheet was complete and perfect, and was not torn or separated at the places of folding as it now is. The paper when given to me was stained and looked very old. The deed from which I copied this deed was not signed at all. When I wrote this deed I gave it back to Mr. Bryan; it had not been signed at this time by any of the parties whose names now appear at the foot of it. Mr. Bryan is dead. When I referred to Mr. Minar in my testimony just now I meant James M. Minar. I know Mrs. Minar, the wife of James M. Minar, but, do not know her given name. James M. Minar is
260 a son-in-law of W. C. Riddle, the plaintiff in this case, Mrs. Minar being Mr. Riddle's daughter. Mr. Bryan told me that Mr. Minar promised him one hundred dollars as a consideration for writing the deed if he gained the suit. The signatures of Mr. Riddle and the witnesses to this deed have been put there since I wrote it and turned it over to Mr. Bryan.

Cross-examination:

I live, I suppose, about two or three miles, or perhaps more, from where land in question lies. I don't know positively when this

litigation began, but I suppose it began before I wrote the deed; I knew nothing of this litigation before I wrote the deed. I have not lived in Washington Co. all my life; have been living there nearly four years; I have lived there continuously since I wrote the deed. I suppose this is a case of some notoriety in that county, as there is a good deal said about it. I knew when I wrote the deed that suit was going to be entered; Mr. Bryan told me so. I was related to Mr. Bryan, but don't know what the exact degree of relationship was. I copied this deed in my father's store one night in the spring of 1881, in Riddleville. Nobody was present but me. The original that I had to copy from was, to the best of my recollection, on a new looking piece of white paper; don't know in whose handwriting it was. The
261 deed which I wrote resembles the original given me to copy from in the handwriting, which is as close a resemblance as I could make it. The handwriting of the deed written by me resembles my ordinary handwriting very little. I wrote all of this deed. I got nothing for writing this deed. I did it merely for accommodation. When Mr. Bryan had wanted writing done he had often asked me to do it. I don't know Ira Walden, the witness to the deed; don't know if he is living. I don't know Franklin Tanner, the other witness to the deed; don't know if he is living or dead. I first made known the fact that I had written this deed about six months ago. My father was the first one I told about it. I kept this secret to myself for about two years. I did suspicion something wrong when I copied this deed under those circumstances. I consented to write this deed because I did not think it would injure me. All I had to do was to copy it and give it back to Mr. Bryan. I thought about this deed all along after writing it, and the more I thought about — the more I became convinced it ought to be known. My family and the Riddle family are on good terms, so far as I know. I wrote on both sides of the paper when I wrote the deed. I don't know that I could every time swear to my own handwriting when I had attempted to imitate some one else's. In copying the deed I tried to imitate the formation of every letter
262 the best I could. I could take this deed and make a copy to resemble it very much by taking my time. Mr Bryan died some time in May, 1882. The paper here shown me, marked Exhibit "A" by the examiner and attached hereto, was written by me with the exception of what is written in pencil. The writing in ink is mine; the writing in pencil is not. The first consultation I had with the defendants or *their* att'ys about this case was along in the spring of this year—I suppose about six months ago. I don't know when trial took place here.

Redirect:

I have heard of such a man as Ira Walden, but have no acquaintance with him. I positively identify this deed as the one I wrote. I can identify it by its looks and by the handwriting, and the contents of this deed are exactly the same as the one I copied. I only made the one copy.

S. TRULUCK.

Next follows a running account of S. Truluck, marked "Exhibit A" by R. H. de M., examiner; merely a specimen of S. Truluck's handwriting.

Deposition of B. J. Wilson, Witness for the Defendant.

J. BEN WILSON, sworn for the def't, B. J. Wilson, says:

263 I am a son of B. J. Wilson, the def't. I know the two tracts of land involved in the suit in this case, the "Brantley Mill" and "Brown" tracts. I think my father got possession of these places in 1877; I took charge of them in 1878.

Question. What were the mesne profits of those two places from the time your father got them up to the present time?

(Objection to any answer as to what mesne profits were during the year 1877, unless he has actual knowledge of the same.)

Answer. I think 1877 was the first year he got any rents. My recollection is that he got no rents in 1876. Some years the place was not rented at all, but I have averaged it. In 1877 he got ten bales of cotton (lint), average weight about 500 pounds each, worth from thirty-five to forty dollars each. The average for the 5 years succeeding 1877 has been eleven bales per year of about the same weight and value as those mentioned above. My father has fenced in both of these places. This fencing was worth about eleven hundred dollars. Two frame houses of two rooms each have been erected on the land. These two houses cost father about five hundred and fifty dollars. There are two cabins that have been erected worth about one hundred dollars. Then I dug some wells (3 in number)—cost about sixty dollars—and I have kept the places in repair all the time at an expense of about eighty-five dollars

264 a year. My father has paid the taxes on the property, amounting to about a hundred dollars a year. My father has about fifty-five hundred acres outside of the three-thousand-acre suit and the fifteen hundred in dispute in this case. These last fifteen hundred acres are worth more per acre than the other lands. Father returns seven thousand acres in one body, and not by separate tracts. I made a memorandum that I considered, say, from $90 to $100.00 a fair proportion of his entire tax for that land. I think his tax in that county is some three hundred dollars. The plaintiffs knew of my father's putting up these improvements during these years. They were neighbors. They never made any objections to the putting up of these improvements or asserted any claim to the land until suit was brought by them. I managed and superintended these places for my father for five years. I went there early in the year 1878.

Cross-examination:

I know what was received in 1877, because I am generally familiar with my father's business and manage it to a large extent. I think I received the rent in 1877 myself, or, if I did not, I made a settlement with the agent, Mr. Henderson. I received what rentals came in for the five years that I had charge of the place. I don't know

how many acres there are in these two places. I have never
265 measured them. There are about ten miles of fencing on those two places that I put up; it was rail fencing—pine and oak rails. Some of those rails cost me from a dollar and a quarter to a dollar and a half a hundred to put up; I should say it averaged a dollar and a quarter to put it up. It would take, say, from eight to ten thousand rails to the mile, according to how you put it up. Some of the rails, say, from old pine fields, would last, say, from two to 3 years, while long leaf pine will last, say, some five years. Rail fences are always settling and have to be kept in repair or added to on top continuously. In my item of repairs fence repairs are included. These two places, I suppose, would be worth on an average, say, seven or eight dollars an acre. I think the plaintiffs claim 1,500 acres. The places would be worth somewhere in the neighborhood of ten or twelve thousand dollars.

If the place was worth $10,000 and the rent was $500.00 per year, that would be five per cent. gross income, but expenses have to be deducted.

Redirect:

Five to six hundred dollars a year would probably be a fair rental value a year for those places, tenant to do repairing.

J. BEN. WILSON.

Answered by the above-named witnesses and reduced to
266 writing by me; then carefully read over to each of said witnesses, respectively, by him signed, and retained in my possession for delivery to the clerk of the court.

R. H. DE MONTMULLIN, [L. S.]
Examiner.

Endorsements on envelope: In U. S. cir. c't, so. dist. Ga., E. D. Riddle *vs.* Wilson. Depositions of S. Truluck and J. Ben. Wilson. Received this package from hand of R. H. de Montmollin, examiner, and filed this Nov. 30th, 1883. Marion Erwin, dep. clerk. Opened by consent this Dec. 1st, 1883. Lanier & Anderson, d'f't's att'ys. Geo. A. Mercer, H. D. D. Twiggs, att'ys for comp'l'ts.

Clerk's Certificate, Petition and Order for Appointment of A. E. Buck Commissioner, A. E. Buck's Notice of Time and Place for Examining Witnesses, and the Testimony of Six Witnesses.

Certificate.

UNITED STATES OF AMERICA, }
Southern District of Georgia, } *ss:*

I, Marion Erwin, deputy clerk of the circuit court of the United States of America for the southern district of Georgia, do hereby certify that the writings annexed to this certificate are true copies
267 of their respective originals on file and remaining of record in my office, to wit, Riddle *vs.* Wilson, petition and order

Next follows a running account of S. Truluck, marked "Exhibit A" by R. H. de M., examiner; merely a specimen of S. Truluck's handwriting.

Deposition of B. J. Wilson, Witness for the Defendant.

J. BEN WILSON, sworn for the def't, B. J. Wilson, says:

263 I am a son of B. J. Wilson, the def't. I know the two tracts of land involved in the suit in this case, the "Brantley Mill" and "Brown" tracts. I think my father got possession of these places in 1877; I took charge of them in 1878.

Question. What were the mesne profits of those two places from the time your father got them up to the present time?

(Objection to any answer as to what mesne profits were during the year 1877, unless he has actual knowledge of the same.)

Answer. I think 1877 was the first year he got any rents. My recollection is that he got no rents in 1876. Some years the place was not rented at all, but I have averaged it. In 1877 he got ten bales of cotton (lint), average weight about 500 pounds each, worth from thirty-five to forty dollars each. The average for the 5 years succeeding 1877 has been eleven bales per year of about the same weight and value as those mentioned above. My father has fenced in both of these places. This fencing was worth about eleven hundred dollars. Two frame houses of two rooms each have been erected on the land. These two houses cost father about five hundred and fifty dollars. There are two cabins that have been erected worth about one hundred dollars. Then I dug some wells (3 in number)—cost about sixty dollars—and I have kept the places in

264 repair all the time at an expense of about eighty-five dollars a year. My father has paid the taxes on the property, amounting to about a hundred dollars a year. My father has about fifty-five hundred acres outside of the three-thousand-acre suit and the fifteen hundred in dispute in this case. These last fifteen hundred acres are worth more per acre than the other lands. Father returns seven thousand acres in one body, and not by separate tracts. I made a memorandum that I considered, say, from $90 to $100.00 a fair proportion of his entire tax for that land. I think his tax in that county is some three hundred dollars. The plaintiffs knew of my father's putting up these improvements during these years. They were neighbors. They never made any objections to the putting up of these improvements or asserted any claim to the land until suit was brought by them. I managed and superintended these places for my father for five years. I went there early in the year 1878.

Cross-examination:

I know what was received in 1877, because I am generally familiar with my father's business and manage it to a large extent. I think I received the rent in 1877 myself, or, if I did not, I made a settlement with the agent, Mr. Henderson. I received what rentals came in for the five years that I had charge of the place. I don't know

how many acres there are in these two places. I have never
265 measured them. There are about ten miles of fencing on those two places that I put up; it was rail fencing—pine and oak rails. Some of those rails cost me from a dollar and a quarter to a dollar and a half a hundred to put up; I should say it averaged a dollar and a quarter to put it up. It would take, say, from eight to ten thousand rails to the mile, according to how you put it up. Some of the rails, say, from old pine fields, would last, say, from two to 3 years, while long leaf pine will last, say, some five years. Rail fences are always settling and have to be kept in repair or added to on top continuously. In my item of repairs fence repairs are included. These two places, I suppose, would be worth on an average, say, seven or eight dollars an acre. I think the plaintiffs claim 1,500 acres. The places would be worth somewhere in the neighborhood of ten or twelve thousand dollars.

If the place was worth $10,000 and the rent was $500.00 per year, that would be five per cent. gross income, but expenses have to be deducted.

Redirect:

Five to six hundred dollars a year would probably be a fair rental value a year for those places, tenant to do repairing.

J. BEN. WILSON.

Answered by the above-named witnesses and reduced to
266 writing by me; then carefully read over to each of said witnesses, respectively, by him signed, and retained in my possession for delivery to the clerk of the court.

R. H. DE MONTMULLIN, [L. S.]
Examiner.

Endorsements on envelope: In U. S. cir. c't, so. dist. Ga., E. D. Riddle *vs.* Wilson. Depositions of S. Truluck and J. Ben. Wilson. Received this package from hand of R. H. de Montmollin, examiner, and filed this Nov. 30th, 1883. Marion Erwin, dep. clerk. Opened by consent this Dec. 1st, 1883. Lanier & Anderson, d'f't's att'ys. Geo. A. Mercer, H. D. D. Twiggs, att'ys for comp'l'ts.

Clerk's Certificate, Petition and Order for Appointment of A. E. Buck Commissioner, A. E. Buck's Notice of Time and Place for Examining Witnesses, and the Testimony of Six Witnesses.

Certificate.

UNITED STATES OF AMERICA, }
Southern District of Georgia, } *ss:*

I, Marion Erwin, deputy clerk of the circuit court of the United States of America for the southern district of Georgia, do hereby certify that the writings annexed to this certificate are true copies
267 of their respective originals on file and remaining of record in my office, to wit, Riddle *vs.* Wilson, petition and order

appointing A. E. Buck, of Atlanta, a commissioner to take testimony in said case and to forward to him original deed, &c.

In witness whereof I have caused the seal of the said court to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this 21st day of November, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and —.

[L. S. of the Court.]

MARION ERWIN,
Dep. Clerk C. C.

Petition.

United States of America to the judges of the circuit court of the United States for the southern district of Georgia:

Your petitioner shows that a suit is now pending in said court in favor of Seny Ann S. Riddle and her children against your petitioner for recovery of fifteen hundred acres of land in Washington county, Georgia, which suit is founded on a paper purporting and claimed by the plaintiffs to be a deed from Wm. C. Riddle, the husband of said Seny Ann and father of said children, to him as trustee for his said wife and children. To this suit the petitioner, among other things, answers that the said deed is not genuine, but was and is a forgery; and testimony has been taken by both sides on this issue. The deed in question is now attached to interrogatories and answers belonging to the files of said court, and
268 your petitioner is advised that it is important to subject said instrument to the inspection and examination of experts, one or more of whom reside in Atlanta, Georgia.

Wherefore your petitioner prays for an order allowing and authorizing the clerk of said court to transmit said deed and the paper it is attached to to the clerk of the court of the northern district of Georgia, at Atlanta, Georgia, there to remain one week, subject to inspection, and then to be returned by the last-named clerk to the clerk of the court at Savannah by express; and, further, that the clerk of the court of said northern district of Georgia be appointed as commissioner to take the testimony of such witnesses as may be brought before him to testify upon your petitioner giving the plaintiffs or their counsel five days' notice of the time & place of taking such testimony.

November 30th, 1883.

J. K. HINES,
LANIER & ANDERSON,
Of Counsel for Petitioner.

Order of Court.

Let the order within prayed for be granted, and accordingly the clerk of the circuit court for the southern district will transmit by express to Col. A. E. Buck, clerk of the circuit court for the northern district of Georgia, at Atlanta, the original document within described, to remain one week subject to inspection, & then to be re-

turned to the clerk of the circuit court for the southern district; and A. E. Buck is appointed commissioner to take evidence
269 in said case upon five days' notice of the time and place fixed for the examination of witnesses.

Atlanta, Ga., Nov. 30th, 1883.

DON A. PARDEE,
Circuit Judge.

Notice to Take Testimony.

CLERK'S OFFICE, U. S. CIRCUIT COURT,
ATLANTA, GA., *Nov. 20th*, 1883.

DEAR SIR: By virtue of an order passed by the circuit judge of the United States for the 5th judicial circuit, on the 20th day of Nov. 1883, I respectfully give notice that on Nov. 26th, 1883, at ten o'cl'k a. m., at my office in Atlanta, I will take the testimony of experts and others as to the execution and genuineness of deed of W. C. Riddle to himself, as trustee for Sena Ann S. Riddle and her children by the said Riddle, in case of Riddle against Wilson, for recovery of fifteen hundred acres of land in Washington Co., Ga., a cause pending in the U. S. circuit court for the southern district of Georgia.

Very resp'ly, &c.. A. E. BUCK, *Clerk.*

Hon. H. D. D. Twiggs, E. S. Langmade, J. Ben. Wilson, D. D. Evans, att'ys, &c.

Depositions.

UNITED STATES OF AMERICA, *Northern District of Georgia:*

In U. S. Cir. Court, Southern District of Georgia.

W. C. RIDDLE *et al.* *vs.* B. J. WILSON.

270 In pursuance to order passed by Honorable Don A. Pardee, circuit judge for the 5th judicial circuit, at Atlanta, Ga., on the 20th day of Nov., 1883, in the above-stated case, appointing me a commissioner to take evidence in said cause, on five days' notice of the time and place fixed for the examination of witnesses, a certified copy of which order is hereto attached, notice was given by letters, on the 20th day of Nov. 1883, to the attorneys of parties in interest (see copy of notice hereto attached) that on the 26th day of Nov. I would take the testimony.

On this the 23d day of November inst. personally appeared H. D. D. Twiggs, counsel for plaintiff-, and also Clifford Anderson, counsel for def't, and, counsel for pl'ff- waiving further time and consenting thereto, the examination of the witnesses was begun at 3½ o'clock p. m., and the testimony of B. F. Moore was taken in part.

Testimony of B. F. Moore for Def't.

B. F. MOORE, being duly sworn on behalf of the defendants as an expert, to questions propounded by defendant's counsel answers as follows:

Question. Please state your residence and age.

Ans. I reside in Atlanta; am 51 years of age.

Q. What is your profession and how long have you been engaged in it?

Ans. My profession is that of accountant and teacher of
271 book-keeping; have been engaged in that profession twenty-nine (29) years.

Q. Are you connected with any business school or college?

Ans. I am president of Moore's Business University & College.

Q. Are you or not and expert as to handwriting?

Ans. I consider myself an expert as to writing.

Q. What experience have you had as to examining different styles of handwriting and as to their genuineness and as to length of time writing has existed?

Answer. I have had experience in testifying as to handwriting in the courts, State and Federal, about 5 or 6 times in the last few years.

Question. Have you frequently or occasionally within the last 25 years had occasion to examine into the different styles of writing?

Answer. I have been teacher of penmanship during five years of this time and have continually during that time examined the differences in handwriting.

Question. What knowledge have you in reference to age of ink as it appears on paper, and do you or not consider yourself an expert as to that?

Answer. It is difficult to answer as to that question. It depends upon the surroundings. I can give my expert testimony as to writing, to the best of my knowledge & belief. I have never had any experience in that line—*i. e.*, as to age of ink.

Question. What particular things as to handwriting, as to
272 the use of materials (which includes ink) in handwriting, do you consider yourself an expert in?

Answer. I consider myself an expert in examinations of forged signatures.

Question. Have you seen a deed purported to have been signed by Wm. C. Riddle, now in the possession of Mr. Buck, the commissioner, namely, this deed now exhibited & purporting to — been dated on the 23d day of April, 1853, and to convey fifteen hundred (1,500) acres of land to himself in trust for his wife, Seny Ann S. Riddle, & their children, and have you examined said deed carefully?

Answer. I have seen the deed and carefully examined it.

Question. Have you noticed carefully and critically the name of Wm. C. Riddle to said deed?

Answer. I have.

Question. Please look at paper handed you, which is to be hereto attached and marked Exhibit "A," and compare the signature thereto with the signature to the deed above referred to and state whether, in your opinion, the same person who signed the deed signed the paper handed you.

Answer. My opinion is that the same person who signed the paper did not sign the deed.

Question. Please look at this paper handed you and compare the signature with the signature to deed (which paper is to be hereto attached and marked Exhibit B) and state whether, in your opinion as an expert, the same person who signed the deed signed the paper handed you.

273 Answer. The person who signed the paper (Exhibit "B") did not sign the deed.

Question. Look on the endorsement on back of the deed, dated Oct. 5, 1881, and signed A. M. Mayo, clerk, and compare the writing with the writing in the body of the deed and give your opinion as to the difference in age of writing on the back and in the body of the deed.

Answer. My opinion is that the writing in the body of the deed was done near about the same time as the endorsement upon the back of deed by Mayo.

At 5 p. m. adjourned the further examination of Mr. Moore to 3½ o'clock p. m., to-morrow, the 24th Nov.

B. F. Moore appeared at 3½ o'clock p. m. to continue the testimony, and there being present Clifford Anderson, Esq., counsel for the def't, and H. D. D. Twiggs, counsel for the plaintiff-, the witness, to questions propounded by Mr. Anderson, testified as follows:

(Here the counsel for plaintiff- objects to the last question and answer of the witness because his previous testimony shows that he is not an expert as to the subject embraced in that question and answer.)

Question. How much older, if any, in your opinion, is the writing in the body of the deed than the writing or endorsement signed by Mayo?

Answer. My opinion is that there is but a year or two's difference.

274 Question. Examine the endorsement on back of deeds signed by L. A. Jernigan, clerk, and compare that writing with the writing in the body of the deed, and state what, in your opinion, is the difference in the age in the two writings.

Answer. It is impossible to tell the difference in the age, but there is a great difference in time between the writing of the endorsement by Jernigan and the writing in the body of the deed.

Question. When you say it is impossible to tell the difference, do you mean that it is impossible to tell whether there is a great difference or to state the exact difference?

Answer. I will state that the endorsement on the back by Jernigan shows age, while that in the body of the deed does not.

Question. The endorsement on the deed by Jernigan shows age corresponding to the age of the paper on which it is written, while the writing on the body of the deed does not.

(Here counsel for plaintiff- interposes the same objection to the above testimony as that embraced in the previous objection and for the same reasons.)

Question. Does the business in which you have been engaged for years past tend to qualify you or not for judging of the age of writing and age of paper?

Answer. My business has a tendency to qualify me in that respect.

Question. Have you ever given especial attention to studying or noticing the age of writing?

275 Answer. Have made no special study in that line, but I have noticed very closely handwriting generally, and am able to give my opinion on the matter.

Question. Have you had any experience in your profession in determining the age of writing?

Answer. I have had no such experience, as the matter has never been brought to my attention.

(Here counsel for pl'ff- objects to all the above testimony which relates to the comparative age of handwritings upon the ground that the testimony of the witness shows in that respect he is not an expert.)

Question. What is your opinion as to age of paper on which the deed is written; is it any older comparatively now?

Answer. The paper on which deed is written, from my knowledge of the paper, is a quality of paper that was manufactured previous to 1860. I have not seen any of this quality of paper on the market for the past ten or fifteen years. I know the kind of paper, having used and handled a great deal of it before the war.

Question. You say that you have testified 5 or 6 times as an expert as to alleged forgeries within the last five years. State whether your opinion in these cases turned out to be correct or incorrect?

Answer. As far as I know my testimony has been sustained by the courts.

(Here counsel for pl'ffs objects to last question and answer as improper, illegal, & irrelevant.)

276 Question. What kind of glass is that with which you have examined these papers?

Answer. It is a magnifying glass; powers magnifying about four times.

(Here counsel for pl't'ffs asks that the glass be put in evidence, which is done and marked X.)

Q. State your reasons for your answers given as to the age of this writing.

Answer. My opinion is this: That the first points to look at is the quality of ink used; next the action of that ink on the paper. The ink manufactured within the last twenty years does not embrace

the same chemicals generally as ink used before that time. The preservative properties of good ink embrace a considerable portion of nutgal-, which is not used at great extent at this time, but is made up in great part of anolines and other properties to give it body. The properties of an ink manufactured of nutgal-s gives it a permanent appearance on the paper, and writing executed with that kind of ink is distinguished from that of any other kind upon close inspection, and enters the paper, giving it a lasting appearance. I have had considerable experience in the purchase and use of inks and experimenting with the same. The ink used in the body of the deed is a different ink from that used in the endorsement of that of Jernigan's on the back. It does not show the age, neither
277 does it show the chemical properties of the ink used on said endorsement. Thus, if the writing done in the body of the deed was made on or about the time of the endorsement by Jernigan, & taking into consideration the quality of the paper, the appearance of both writings would have been the same at this time.

Here, at 6 o'cl'k p. m., further examinations of the witness continued to 3½ o'cl'k p. m., Tuesday next, Nov. 27th, 1883, and testimony of other witnesses taken, to be attached — unto.

B. F. Moore, witness for defendant, appeared, together with the d'f't and his attorney, J. Le Tye; also the counsel for the plaintiff, and the examination of witness resumed Nov. 27th, 3½ o'cl'k p. m.

Question. If you have any additional reasons, please state them as to the matter of paper.

Answer. This being an old piece of paper upon which the deed is written, shows when it has been bleached by age, and if the ink used in writing this deed at the time of the endorsement by Jernigen and the writing had been done at that time, these bleached places would have been correspondingly aged with the paper on these represented bleached spots. There is very little indication of change in the complexion of the letters from that of other parts of the deed regarding the age.

Question. What is there about the ink that shows recent execution?

278 Answer. It has a fresh appearance of having been written much later than the endorsement.

Cross-examination by counsel for the plaintiff-:

Question. Are you a chemist?

Answer. I am not by profession.

Question. Can any person who is not a chemist detect the constituent properties either of solids or fluids by analysis?

Answer. I do not consider that they can.

Question. Did you ever analise any ink?

Answer. No, sir.

Question. Then how do you know of your own knowledge what are the constituent properties of ink, not having analysed any?

Answer. From my experience in using it and its action on pens and paper.

Question. How does the use of it determine its constituent elements?

Answer. The actions of some inks on paper are entirely different from others.

Question. Do you know what the constituent properties of ink are, except from hearsay?

Answer. From the formula laid down in the dispensatory.

Question. So you don't know of your own knowledge, except from what you have stated, what are the properties of ink?

Answer. I have never manufactured any ink; I do not know.

Question. Were you ever in Washington county?

Answer. Only in passing through on railroad.

Question. Did you ever meet Wm. C. Riddle?

Answer. No, sir.

279 Question. Did you ever, of your own knowledge, see his signature?

Answer. No, sir.

(Here counsel for plaintiff gives notice that he will move the court to rule out all of the above said testimony on the direct examination of this witness upon the ground that his testimony shows that he is not an expert as to the constituent properties or elements of ink.)

Question. Do you swear that the signatures W. C. Riddle to Exhibits A & B were not made by the same man who signed the deed?

Answer. I will not swear that. My opinion is they were not signed by the same person.

At this point in the testimony of Mr. Moore his further examination was continued till to-morrow, at 9 o'cl'k a. m., Nov. 28th, and the testimony of F. M. Coller and in part the testimony of B. J. Wilson, the def't, were taken, to be attached to the testimony of this witness.

B. F. Moore, witness, & counsel for both sides and d'f't being present, at 9 o'cl'k a. m., this 28th day of Nov., examination of witness resumed:

Question. As an expert, look at signature of Ira Walden on deed and on the margin of the interrogatories of Ira Walden and compare those signatures to the signatures of Ira Walden here handed you, marked Exhibit C, and state whether or not they are in the same handwriting.

Answer. My opinion is that they are all written by the same person.

BENJ. F. MOORE.

Subscribed and sworn to before me Nov. 24, 1883.

A. E. BUCK,
Commissioner & Clerk U. S. Court.

280 (Counsel for plaintiff withdrawing his request, that the magnifying glass (marked X) be put in evidence, the defendant asks that it goes in evidence, which is done.)

EXHIBITS.

Here follows Exhibits "A," "B," and "C," which show the signatures of W. C. Riddle & L. A. Jernigan.

NOV. 24TH, 1883.

On closing testimony of B. F. Moore for the day J. W. GOLDSMITH, being sworn on behalf of defendant to questions propounded by counsel for defendant, testifies as follows:

Question. Please state your residence and how long you have resided there.

Answer. Atlanta; have lived there 20 years, about.

Question. What has been your business and how long — you been engaged in it?

Answer. Banking business, as cashier a great part of the time, from 1868 to 1876; part of the time as paying teller.

Question. Do you consider yourself an expert as to genuineness of signatures?

Answer. Yes, sir; having to pass upon signatures almost daily during the time in bank.

Question. Please look at the signatures to the papers (2) now handed you, being Exhibits A & B attached to the testimony of B. F. Moore, & then examine the signature to the deed now exhibited to you, purporting to be that of W. C. Riddle to deed dated
281 April 23d, 1853, conveying fifteen hundred acres of land to himself in trust for Sena Ann S. Riddle, his wife, and their children, and state whether, in your opinion, the same person who signed the papers marked A & B also signed the deed.

Answer. I do not think the same person signed the deed and the two papers marked A & B.

Cross-questions propounded — witness by H. D. D. TWIGGS, Esq., counsel for plaintiffs:

Question. Are you familiar or acquainted with the handwriting of Wm. C. Riddle?

Answer. I never saw it before to-day. I never saw his signature before, unless these are his signatures to these papers.

Question. Suppose one signature was made over 20 years before another, do you mean to say that the lapse of time would make no difference in the handwriting?

Answer. I do not mean to say that.

Question. Is the handwriting of a comparatively young man accustomed to manuel labor not very frequently different from the handwriting made by that same man unaccustomed to labor at a late period?

Answer. There is a difference. A laboring man is not supposed to write as smoothly as a man who does not labor, but there is a similarity in a man's handwriting at all times that is recognsable.

Question. Is there not a striking similarity between the signatures to the papers A & B & the deed?

Answer. There is a similarity in the first initial (W.), but the name Riddle is very dissimilar in the signature to A & B & the deed.

282 Question. I will ask you if Wm. C. in the signature to the deed is not strikingly similar to Wm. C. in Exhibits A & B?

Answer. I think not, sir.

Question. Have you examined the signatures to these papers at Col. Wilson's instance before you came here this evening to testify?

Answer. Yes; just before the examination began this exening.

Question. You had made up your mind what to say before the papers were exhibited to you since you were sworn?

Answer. Yes, sir; I made up my mind very soon after seeing the papers.

Question. Then why did you examine the papers at great length before answering the question propounded to you by the co-nsel for Mr. Wilson?

Answer. I answered them very promptly after the commissioner had written out the questions.

Question. Was you ever in Washington county?

Answer. I do not know that I was ever in the county.

Question. Do you know or did you ever see Mr. Wm. C. Riddle?

Ans. Not that I know of.

Question. Do I understand you as being willing to swear that the person who signed Exhibits A & B did not sign the deed?

Answer. No; not at all. I give it as my opinion that he did not.

J. W. GOLDSMITH.

Subscribed & sworn to before me this Nov. 29th, 1883.

A. E. BUCK,
Clerk & Com'r.

283 *Testimony of E. S. McCandless.*

E. S. McCandless sworn, and in answer to questions propounded by counsel for defendant testifies as follows:

Question. Where do reside and how long have you resided there?

Answer. Atlanta; have lived here 15 years.

Question. In what business have you been engaged during that time?

Ans. In banking business, from holding positions of collecting clerk up to cashier in the Atlanta National, and at present in Gate City Bank.

Ques. Do you consider yourself an expert in judging genuineness of signatures or handwriting?

Ans. I could not answer that I am. I will qualify that by saying that I have no considerable experience in examining handwriting or signatures that I am not familiar with. I have had considerable experience in examining handwriting and signatures that I am familiar with. I do not know that I understand what you mean by the term expert.

Ques. What do you understand by the term expert as to handwriting?

Answer. I would consider it referring to a man who makes a profession of examining handwriting & signatures.

Ques. Do you consider yourself as having more than ordinary experience in the matter of examining signatures and handwriting & judging of their genuineness?

Ans. Yes, sir.

Question. Since you have been engaged in banking busi-
284 ness has it or not fallen to your lot to frequently examine signatures with a view to determine their genuineness?

Ans. Yes, sir.

Question. Please look at the signatures to the two papers handed to you, being Exhibits A & B attached to the testimony of B. F. Moore, and then examine the signature to the deed now handed you, purporting to be that of Wm. C. Riddle and dated April 23d, 1853, conveying fifteen hundred acres of land to himself in trust for Sena Ann S. Riddle, his wife, and their children, and state whether, in your opinion, the same person who signed the papers marked A & B also signed the deed.

Ans. That is something I do not wish to give an opinion upon; the signatures appear to be dissimilar.

(Plaintiff- objects to above testimony because the same shows that the witness is not such an expert according to his own statement as makes him a competent witness.)

Cross-examination by counsel for plaintiffs:

Question. You have said that the signatures appear to be dissimilar; might not that dissimilarity, if any exists, be accounted for by the reasons that the signatures to Exhibits A & B were made about 20 years after the signatures to the deed?

Ans. In my opinion it is possible.

Question. Is the handwriting of a comparatively young man accustomed to manuel labor not apt to be different from the
285 handwriting of the same man unaccustomed to labor at a much later period in life?

Ans. I should think so.

Ques. Is there not a striking similarity in the abbreviation "Wm. C." in Exhibit- A & B to the same abbreviation—Wm. C.—in the deed?

Answer. There is.

E'W'D McCANDLESS.

Subscribed & sworn to before me this Nov. 24th, 1883.

A. E. BUCK,
Com'r & Clerk U. S. Court.

Testimony of W. D. Luckie.

W. D. LUCKIE, being duly sworn, in answer to questions propounded by counsel for defendant, testifies as follows:

Question. Where have you resided, & how long?

Ans. Atlanta, for 18 years.

Ques. In what business have you been engaged?

Ans. Book-keeping and banking business; as teller and cashier in Merchants' Bank; as paying and receiving teller first, and now as cashier.

Ques. Have you had much experience in examining signatures with a view to determine their genuineness?

Ans. Necessarily as paying teller I had best occasion to examine very many signatures.

Ques. Do you consider yourself as an expert in judging of genuineness of handwriting & signatures?

Ans. My idea of expert is that an expert is a professional.

286 I do not consider myself a professional at all. I think I am a very fair judge of the genuineness of handwriting & signatures.

Question. Please look at the signatures of the two papers now handed you, being Exhibits A & B attached to the testimony of B. F. Moore, and then examine the signature to the deed now exhibited to you, purporting to be that of Wm. C. Riddle to deed dated April 23d, 1853, conveying fifteen hundred acres of land to himself in trust for Seany Ann S. Riddle, his wife, and their children, and state whether, in your opinion, the same person who signs the papers marked A & B also signed the deed.

Ans. I will say this, that if these three signatures had come to me upon checks as the signature of Wm. C. Riddle I would, without hesitation, refuse payment upon the signature attached to the deed. I cannot say that the three papers were not signed by the same person. It might be the same. I think in nearly all respects the signature to the deed is dissimilar to the signatures to the other papers.

Cross by counsel for plaintiff:

Question. Suppose that you knew the signatures to Exhibits A & B were made under different circumstances and at a difference of time of about 20 years to the signatures to this deed; might not that account for the dissimilarity which you think exists?

287 Ans. I think, under certain stress of circumstances, there might be a dissimilarity, but should hardly think it would be as great as shown there.

Question. Suppose the signature to the deed was made by a comparatively young man accustomed to manual labor and the signatures to A & B were made by the same man 20 years later who had ceased manual labor, might not that account for the dissimilarity which you express?

Ans. Yes; if in the meantime he had endeavored to improve his handwriting.

Ques. Are not the abbreviations Wm. C. in Exhibits A & B strikingly similar to that of the abbreviation Wm. C. signed to the deed?

Ans. The "Wm." part is very similar; I do not think the other is.

Ques. I will ask you if you are willing to swear that the signatures to Exhibits A & B were not made by the same person who signed the deed?

writing.

Ans. I am not willing to swear that the same person did not sign the deed who signed the exhibits, but to the best of my belief the same person did not.

Rebuttal for def't:

Ques. Suppose the person who signed the deed was then between 36 & 40 years of age and the person who signed the Exhibit A was between 48 & 53 years of age & the person who signed Exhibit B was between 53 & 58 years of age, state whether, in your
288 opinion, his handwriting would have undergone such a change as would account for the dissimilarity between the signatures to A & B and the signature to the deed.

Ans. I think it possible that such improvement might be made in one's handwriting by his practice with the pen, but when a man gets to be 45 or 50 years old, unless he has some object in view, I don't think that there could be such a striking dissimilarity as appears unless he tried to improve his handwriting by practice with the pen.

W. D. LUCKIE.

Subscribed & sworn to before me this Nov. 24th, 1883.

A. E. BUCK,
Commissioner & Clerk U. S. Court.

Testimony of H. M. Coker, Jr.

Nov. 27TH, 1883—5 o'cl'k p. m.

H. M. COKER, Jr., appeared as a witness and, being duly sworn, answered to questions propounded by counsel for def't as follows:

Question. What is your residence, & how long?

Ans. I live in Atlanta; have resided here twelve years & few months.

Question. What is your business, and how long have you been engaged in it?

Ans. Banker; have been in the business about eight years in different capacities, from messenger to cashier.

Ques. Do you consider yourself an expert as to signatures?
289 Ans. I have had about seven years' experience in that particular line. I consider myself an expert.

Question. Please look at the two papers handed to you, being Exhibits A and B, attached to testimony of B. F. Moore, and then examine signature to the deed now exhibited to you, purporting to be that of Wm. C. Riddle to deed dated April 23d, 1853, conveying fifteen hundred acres of land to himself in trust for Seany Ann S. Riddle, his wife, and their children, and state whether, in your opinion, the same person who signed the papers marked A & B also signed the deed.

Ans. I saw those papers Saturday afternoon, I think. The lapse of years I had not thought about—that is, the number of years between the date of the deed exhibited last and the two drafts, marked A & B, that I have before me. I observe that there is a difference

of about five years between the signing of one draft, dated Oct. 6th, 1868, & the other one, dated Jan. 26th, 1871, & that the signatures to the same are almost identically the same. The difference between the signatures on the two drafts from that I see upon the deed is certainly, in my opinion, considerable. I do not believe that the same man signed all the papers, unless it can be proven to me that through some disease or accident the nerves of that man were greatly impaired.

Cross-examination by counsel for plaintiff:

290 Ques. Suppose the man who signed the deed was a much younger man and a man at that time accustomed to manual labor, and suppose that the same man, later in life, had ceased manual labor and by wealth and general improvement had bettered his condition, might not that account for what you term the dissimilarity between the signatures upon the respective papers?

Ans. I think I have almost answered that question in my opinions already expressed, inasmuch as I have said that unless it can be proven to me that if the same man signed all the papers his nerves had been diseased through some influence or other I do not believe the same man signed them. I think it might be accounted for on the hypothesis suggested. Manual labor very frequently renders the nerves unsteady with the pen.

Ques. Examine the initials Wm. C. in Exhibits A & B and the initials Wm. C. in the deed and see if there is not a strong similarity as to them.

Ans. They resemble, but not closely.

Question. Are you willing to swear that the same man who signed Exhibits A & B did not sign the deed?

Ans. I am not, sir.

H. M. COKER, Jr.

Subscribed & sworn to before me this Nov. 27th, 1883.

A. E. BUCK,
Com'r & Clerk U. S. Court.

291 *Deposition of B. J. Wilson.*

B. J. Wilson, def't, being sworn, in answer to questions by his counsel propounded, testifies as follows:

Question. Do you know Wm. C. Riddle, and how long?

Answer. I do; since 1866.

Question. Do you know his handwriting?

Answer. I do.

Question. Look on the Exhibits A & B, signed by Wm. C. Riddle, and state whether or not the signature is in Wm. C. Riddle's handwriting?

Answer. They are in Wm. C. Riddle's handwriting.

Cross-examination by counsel for plaintiff:

Question. Please examine the signature to the deed and state whether or not, in your opinion, Wm. C. Riddle signed that deed.

Answer. My opinion is, if he signed it he must have been laboring under great nervous disability, as the signature to the deed and those to Exhibits A & B are very dissimilar.

(Here counsel for plaintiffs insists upon an opinion from witness without qualifications; to which witness says that he has answered the questions to the best of — ability.)

Question. Do you decline to answer this question as to your opinion of his signature to the deed?

Answer. I do not decline. I consider I have already answered it.

Question. You have already sworn that you are acquainted
292 with the handwriting of Wm. C. Riddle. Did you not tell me here in the presence of the commissioner to-day that you believed that Wm. C. Riddle signed that deed until you heard the expert's testimony on the subject?

Answer. I think I did, substantially. I don't know in whose presence I spoke of a theory that I entertain in relation to the execution and genuineness of deed. I stated to the counsel that I had a theory that Riddle really signed it, but in a perverted hand; but I may not have said a "perverted hand" to counsel. I have been in the habit of discussing with the counsel for pl'ff- questions that had arisen in this case in a friendly, neighborly, conversational manner. When I spoke of this being Riddle's handwriting it was spoken in the light of a theory, not that I pretend that I know anything about it myself.

(Here counsel for def't objects to all of the foregoing questions and answers on cross-examination on the ground that nothing drawn out on the direct testimony of witness warrants the introduction of the testimony drawn out on the cross-examination.)

Here further examination of witness, at 6 o'cl'k p. m., was adjourned to be continued to-morrow, Nov. 28th, at 9 o'clock a. m.

WEDNESDAY, AT 9 O'CLOCK A. M.

Witness B. J. Wilson, def't, and J. L. Tye, counsel for def't, & H. D. D. Twiggs, counsel for pl'ff-, present.

293 And there being no further questions propounded to witness his examination was closed.

B. J. WILSON.

Subscribed & sworn to before me this Nov. 28th, 1883.

A. E. BUCK,
Com'r & Clerk U. S. Court.

Endorsements on envelope: S. S. Riddle *et al. vs.* —— ——. Bill, etc., U. S. C. C., southern dist. Ga. Depositions of witnesses on behalf of defendant. P. O., Atlanta, Ga., Nov. 30th, 1883. Received this package from clerk U. S. district court in good order for transmission by mail. B. H. Camp. Received in due course of mail this 1st Dec., 1883. L. McLaws, P. M., p'r Coolidge. A. E. Buck, com'r. (Seal.) A. E. Buck, com'r. (Seal.) Received by due course of

mail & filed. Dec. 1st, 1883. Marion Erwin, dep. clerk C. C. Opened by consent this Dec. 1, 1883. Geo. A. Mercer, H. D. D. Twiggs, att'ys for compl'nt. Lanier & Anderson, att'ys for def't.

294 *Testimony of B. J. Wilson for Def't, Taken in Open Court.*

Circuit Court of U. S., So. Dist. Georgia. In Chancery.

WM. C. RIDDLE *et al. vs.* B. J. WILSON.

Testimony of B. J. WILSON, being duly sworn in open court, says:

I have no acquaintance with a man by the name of Aiden Vining; I don't know that I have ever seen the man in my life, and deny most positively that I have ever had any conversation with any such man upon the subject of a trust deed given by Wm. C. Riddle, nor did I ever state to him or to any one else that I ever had any notice of such trust deed until about the fall term of court, 1876. I then spoke of the rumors which I had heard after the trial of the case on the foreclosure of mortgage. I spoke of these rumors and asked Mr. Thomas if he had heard of such a deed—the deed for 3,000 acres. I never heard of this trust deed in question or any rumor of it until 1881.

Cross-examined:

I had heard these rumors after the trial of the foreclosure writ and before the sale of the property under the mortgage *fi. fa.* I do say I never saw Mr. Vining and never had this conversation. I never had him subpœnaed nor instructed any one to have him subpœnaed.

Taken in open court and sworn to this Dec. 1, 1883.

JAS. W. LOCKE, *Judge.*

Filed Dec. 1, 1883.

MARION ERWIN,
Deputy Clerk.

295 *Letter of S. Truluck, Produced under Notice to Def't.*

RIDDLEVILLE, GA., *Feb'y* 16, 1883.

Mr. J. B. Wilson.

DEAR SIR: Yours rec'd, but could not meet you at 12½. I will state to you what I know about the matter: About 2 years ago, or perhaps later, W. G. Bryan told me he wanted me to do some writing for him, and for me not to say anything about it; he gave me a deed from W. C. Riddle to his wife, Senian S. Riddle, for 1,500 acres of land, without any signatures; he also gave me a sheet of very old-looking paper and a bottle of very pale ink, and told me to copy the deed and imitate the handwrite as much as possible, and said Minor promised him $100.00 if they gained the case. I wrote it as he told me and gave it to him. He told me afterwards that Minor said it was all right. W. G. Bryan is dead. This is all that I know

about it; don't know whether it is worth anything or not; you know more about it than I do.

Yours, &c.,

S. TRULUCK,
Riddleville, Ga.

Endorsement: In the United States circuit court for the eastern division, southern district of Georgia. Wm. C. Riddle, trustee, *vs.* B. J. Wilson, def't. In equity. Original letter from S. Truluck, of Feb'y 16, 1883, to J. B. Wilson, produced under notice to defendant. Filed Dec. 4, 1883. Marion Erwin, deputy clerk.

296 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia, } ss:

I, Marion Erwin, deputy clerk of the circuit court of the United States for the southern district of Georgia, eastern division thereof, do hereby certify that I have carefully compared the writings annexed to this certificate, and that they are true and correct copies of their respective originals remaining on file and of record in my office, being a full and complete transcript of the record, proceedings, and evidence taken in the ejectment (afterwards made equity by amendment) cause of Seny Ann S. Riddle *et al.*, complainants, and Benjamin J. Wilson *et al.*, defendants, lately pending in said circuit court and appealed to the Supreme Court of the United States by said defendants.

In testimony whereof I have hereunto set my hand and caused the seal of the said circuit court to be affixed at Savannah, in said district, this sixteenth (16th) day of September, A. D. 1884, and of the Independence of the United States the 109th.

[Seal of U. S. Circuit Court, Georgia.]

MARION ERWIN,
Deputy Clerk.

Endorsed on cover: S. Georgia C. C. U. S. No. 86. Benjamin J. Wilson, appellant, *vs.* William C. Riddle, as trustee for his wife, Seny Ann S. Riddle, and children, Seny Ann S. Riddle, wife of Wm. C. Riddle, Annie E. Minar, wife of T. M. Minar (formerly Annie E. Riddle), *et al.* Filed 11th October, 1884.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia, } ss:

I, H. H. King, clerk of the fifth circuit court of the United States for the southern district of Georgia and eastern division thereof, do hereby certify that I have carefully compared the writings annexed to this certificate, and that they are true and correct copies of their respective originals remaining on file and of record in my office, being a full and complete, true and correct, transcript of the record, proceedings, and evidence taken in the ejectment (afterwards made equity by amendment) cause of William C. Riddle, as trustee for Seany Ann S. Riddle and her children *et al.*, complainants, and Benjamin J. Wilson, defendant, lately pending in said circuit court and appealed to the Supreme Court of the United States by said defendant.

In testimony whereof I have hereunto set my hand and caused the seal of the said circuit court to be affixed, at Savannah, in said district, this 19th day of November, A. D. 1887, and of the Independence of the United States the 112th.

[Seal of U. S. Circuit Court, Georgia.]

H. H. KING, *Clerk*,
By MARION ERWIN, *Deputy Clerk.*

123-684

NOV 14 1887

UNITED STATES SUPREME COURT.

BENJAMIN J. WILSON, APPELLANT,

VS.

WILLIAM C. RIDDLE,

AS TRUSTEE FOR HIS WIFE, SEANY ANN S. RIDDLE AND CHILDREN, ET AL., APPELLEES.

IN EQUITY. APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

ABSTRACT AND BRIEF.

CLIFFORD ANDERSON,
COUNSEL FOR APPELLANT.

MACON, GEORGIA:
J. W. BURKE & CO., PRINTERS, STEREOTYPERS AND BINDERS.
1887.

Benjamin J. Wilson, Appellant,

VS.

WILLIAM C. RIDDLE,

AS TRUSTEE FOR HIS WIFE, SEANY ANN S. RIDDLE AND CHILDREN, ET AL., APPELLEES.

In Equity. Appeal from the Circuit Court of the United States for the Southern District of Georgia.

ABSTRACT AND BRIEF.

It is believed that a statement of the facts in chronological order will give the Court a clearer understanding of the case.

In 1866 the firm of WILKINSON & WILSON was doing business as commission merchants in the city of Savannah, Georgia. WILLIAM C. RIDDLE was a large cotton planter residing in Washington County, Georgia. It was mutually arranged between these commission merchants and Mr. Riddle that they should furnish him supplies and money to run his plantation, and that he should ship his cotton to them for sale, the proceeds to be applied to the payment of the advances made by the firm.

In May, 1867, Riddle being largely indebted to Wilkinson & Wilson, executed to them a mortgage, to secure this indebtedness, on eight thousand acres of land, being part of the plantation occupied and cultivated by him, in Washington County, Georgia. Additional advances of money having been made to Riddle, and his debt to Wilkinson & Wilson having largely increased, he executed to them, in May 1870, his note for $90,000,00, and secured it by a mortgage

then made to them on ten thousand acres of land, which comprised his entire plantation. This last mortgage and note were executed to the firm of B. J. Wilson & Co., the firm of Wilkinson & Wilson having changed to that of B. J. Wilson & Co. A year or two after the mortgage of May, 1870, was executed, Riddle being still largely in debt to B. J. Wilson & Co., the latter commenced proceedings to foreclose said mortgage, and also commenced proceedings to foreclose certain liens which had been given to said firm by Riddle on his growing crops. Pending the proceedings to foreclose this mortgage and the crop liens, Riddle filed a bill in Equity, in which he claimed that he was not indebted to B. J. Wilson & Co.; that they had failed to give him credit for various shipments of cotton made by him and the proceeds of which they had received and used, and alleging that there were various errors in their accounts against him. The prayer of the bill was for an accounting between the parties and that the proceedings instituted by B. J. Wilson & Co., to foreclose the mortgage and crop liens should be enjoined. It should have been stated that when the mortgage of May, 1870, was executed, the mortgage previously made by Riddle in 1867 was concelled; and also that the ten thousand acres of land embraced in the mortgage of 1870 constituted a body of lands lying contiguous to each other on which the family residence of the said Riddle stood, and which were then and had for many years been occupied by the said Riddle and his family.

In the year 1875 the equity cause instituted by Riddle came to trial in the Superior Court of Washington County, Georgia, which resulted in a verdict and judgment in favor of B. J. Wilson & Co., for something over $59,000,00 principal, and interest thereon for a number of years, making the principal and interest amount to about $80,000,00. Riddle applied for a new trial, and pending the motion for a new trial, the parties made a settlement of all the matters involved in the litigation, a copy of which settlement will be found on pages 117 to 119 inclusive, of the printed record. It will be seen by reference to the settlement, that the verdict and decree which had been rendered in favor of Wilson & Co., was to stand, on the condition, amongst others, that Wilson & Co., were to convey to said Riddle and wife a homestead exemption or life-interest in one hundred acres of land (meaning of the land covered by the mortgage) to embrace the dwelling house, yard, garden and orchard where the said

Riddle then resided, the boundaries thereof to be designated by B. J. Wilson.

Shortly after this settlement, a mortgage fi. fa. was issued in favor of said Wilson & Company against said Riddle, and levied on all of the ten thousand acres of land described in said mortgage, except the one hundred acres in and around the dwelling house, which had been allowed as a homestead, as aforesaid. Three thousand acres of the land so levied on were claimed by William C. Riddle, as trustee for his wife and children, by claim proceedings, instituted in accordance with the laws of the State, said claim being based on a deed, which, it was alleged, had been executed by Anderson Riddle, the father of William C. Riddle, to the said William C. Riddle, as trustee for the latter's wife and children. The rest of the land levied on was exposed by the Sheriff to public auction, in accordance with the laws of the State, when John N. Gilmore, who had been one of the attorneys of Riddle in the litigation between him and Wilson & Company, gave a notice to the crowd in attendance at the sale, as to the nature of which notice the evidence is somewhat conflicting. He claims, (see printed record, page 100,) that as the friend and attorney of Mrs. Riddle, he announced to the bystanders that seven thousand acres of the land offered for sale was a trust estate, and that persons purchasing would buy it under full notice that the trust interest would be asserted hereafter.

Wilson testifies (see page 115 of the printed record) that Gilmore stated at the sale that "whoever bought the land would take a risk, as Riddle would get it all back again;" that he gave no notice of any trust deed to the premises sued for, nor did he mention any trust deed at all.

The lands so exposed to sale were bought by B. J. Wilson, and the Sheriff conveyed the said lands to the said Wilson, and placed him in possession thereof, and he has been in possession of the same from that time until now. Said sale took place in 1876. (See printed record, page 17.)

The claim interposed for the three thousand acres was subsequently tried in the Superior Court of Washington county, resulting in a verdict and judgment in favor of Riddle, as trustee for his wife and children.

In August, 1881, Mrs. Seany Ann S. Riddle, wife of William C. Riddle, and their children, commenced an action of ejectment in the

Superior Court of Washington county to recover one thousand five hundred acres of land so bought by B. J. Wilson at Sheriff's sale, claiming that said one thousand and five hundred acres had been conveyed by William C. Riddle to himself, as trustee for his wife and children, on the 23d day of April, 1853. At the September Term, 1881, of said Superior Court, B. J. Wilson, claiming to be an alien, filed a petition for the removal of said ejectment suit from the State Court to the Circuit Court of the United States for the Southern District of Georgia, (See printed record, pages 7 and 8) and said suit was duly removed as prayed for. (See printed record, pages 10 and 11.)

At the November Term, 1882, of the said United States Circuit Court, Judge Pardee presiding, it was ordered that said ejectment suit stand continued for the Term, and that the complainants should reform their pleadings so as to present their cause of action in an equitable shape. (See page 14 printed record.)

In obedience to this order, said ejectment suit was converted into a bill in equity, filed in behalf of William C. Riddle, as trustee for his wife and children, and also in behalf of Mrs. Riddle and said children, against B. J. Wilson, an alien, and subject of Great Britain. This bill alleges, amongst other things, that the lands sued for were, on the 23d of April, 1853, conveyed by a deed of gift, executed by William C. Riddle, to himself in trust and for the benefit of his wife and their children; she to have a life-estate in the one thousand five hundred acres of land conveyed, with remainder to her children living at the time of her death. It alleges further, that said deed of gift was recorded on the 26th day of May, 1853, in the office of the Clerk of the Superior Court of Washington county, Georgia; that the one thousand five hundred acres of land embraced in said deed were part of the lands included in the mortgage executed by said Riddle to B. J. Wilson & Company, on the 3d day of May, 1870; and that said Riddle, at the time when he created said mortgage lien on said lands duly notified said Wilson that a part of said lands was trust property. The bill prayed a decree for the recovery and restoration of said lands to complainants, and that Wilson be required to convey the same to the said William C. Riddle, as trustee for his said wife and children, as aforesaid, and that the said mortgage lien and the deed made to said Wilson by the Sheriff of Washington county be declared null and void as to said trust estate, and cancelled as a cloud upon the title of the

complainants. It also prayed for the recovery of *mesne* profits for the time said Wilson had held the land sued for. There was also a prayer for general relief.

This bill was duly answered by B. J. Wilson, the defendant therein, in which answer it was stated that when the mortgage of May, 1870, was executed by said Riddle, he was in possession of the lands embraced in said mortgage, including the one thousand five hundred acres sued for, and that B. J. Wilson & Company took said mortgage as security for Riddle's large indebtedness to them without any notice whatever that any part of the land was trust property; that Riddle gave no such notice to said firm, nor did he intimate any such thing, and that he did nothing and said nothing to excite the suspicion of the said Wilson & Company, that any part of said lands was trust property. (See page 20 of the printed record.)

The answer further states that after said mortgage of May, 1870, was executed, additional advances of money and supplies were bona fide made upon it, and still without any notice or ground for suspicion as to Riddle's title; that no such notice was given when the first mortgage, to-wit: the mortgage executed in 1867, was executed by said Riddle, and that when the lands embraced in said mortgage of May, 1870, were sold by the sheriff, (except the three thousand acres claimed, and the one hundred acres allowed as a homestead) there was no distinct notice given of the said trust claim or any particular claim, nor was any specific portion of the premises sold, designated as the subject of adverse title; that something was said to the effect that whoever bought would have trouble, but the warning, such as it was, applied alike to all the premises sold; that what was said at the sale was said by John N. Gilmore, and not by Riddle or any of the complainants, most of whom were present; that the three thousand acres not sold had been claimed in the mode provided by the laws of Georgia by Mrs. Riddle, but that she suffered the property now in controversy to be sold without interposing any claim to it, although it was embraced in the same levy with the three thousand acres which she did claim.

By an amendment to his answer, the defendant, Wilson, stated on information and belief, that the deed which complainants charge in their bill was executed by the said William C. Riddle to himself as trustee, was not in fact executed nor written at the time it bears date, nor until within the last few years; and that in truth, it is a much

younger instrument than the mortgage under which the defendant, Wilson, derived and claims title. (See page 20 of the printed record.)

The case came on for hearing, and a final decree at the November Term, 1883, of the Circuit Court for the Southern District of Georgia, his Honor James W. Locke, District Judge of the Southern District of Florida, presiding.

Much evidence was introduced by both sides as to the genuineness of the deed purporting to have been made by William C. Riddle to himself as trustee for his wife and children, and as to whether Wilson & Company had notice of this deed when they took the mortgage from Riddle executed on the 3d of May, 1870; and also as to the nature of the notice given by J. N. Gilmore, as the attorney of Mrs. Riddle at the Sheriff's sale when Wilson bought the land in controversy. This evidence being in writing was read to the jury empannelled by order of the Court, and to which the Court submitted issues as to the genuinenesss of the trust deed, and whether it was executed at the time it purports to have been, and as to whether Wilson had notice of said deed when the mortgage of May 5th, 1870, was executed, or before the Sheriff's sale in 1876. Said evidence was also read and submitted to the Court.

Defendant's counsel offered to read to the jury the bill of complainant, and the answers of defendant thereto, the latter to be considered as evidence by the jury in making up their verdict on the issues submitted, so far as responsive to the allegations of the bill. The Court refused to allow the bill and the answers of the defendant thereto to be read to the jury, and decided that said answers, even if responsive to the allegations of the bill, were not evidence in said case, because the defendant had been separately examined and had testified as a witness in his own behalf.

To this ruling counsel for defendant excepted. (See page 30 of the printed record.)

Defendant also offered in evidence before the jury the mortgage *fi. fa.* in his favor against said Riddle, for the principal sum of $59,000.00, besides interest, together with the Sheriff's levy of the same on ten thousand acres of land, (including the land in dispute,) and the deed of the Sheriff to the land sold, including the lands in controversy. The Court rejected this evidence as not pertinent to the questions submitted to the jury, but said it might be stated to the

jury that the Sheriff had levied on and sold the land in dispute, and that the defendant claimed title under said sale.

This ruling was also excepted to. (See pages 30 and 31 of the printed record.)

Defendant also offered in evidence a petition filed by Mrs. Seany Ann S. Riddle, wife of said William C. Riddle, in 1876, to establish a lost deed from Anderson Riddle, the father of said William C. Riddle, to the said William C. Riddle, in trust for his said wife and their children, to three thousand acres of the said tract of ten thousand acres of land levied on by the Sheriff, as aforesaid, under said mortgage *fi. fa.*, for the purpose of showing that although it is claimed that the trust deed now relied on for one thousand five hundred acres of said land had been in existence and recorded in 1853; and although it is alleged that the said deed for said one thousand five hundred acres was then lost and the record thereof destroyed, no application to establish a copy of said deed for said one thousand five hundred acres was then made. The Court rejected said evidence, but allowed the fact to be stated to the jury, that such a petition was filed.

To this ruling counsel for defendant excepted. (See page 31 of the printed record.)

Defendant also offered in evidence the fact (certified to by the Commissioner before whom Ira Walden was examined as a witness in said case,) that as soon as said Ira Walden testified before said Commissioner, that he made a memorandum at the time he witnessed the deed for the land in dispute, from William C. Riddle to himself in trust for his wife and children, that he, Walden, had witnessed such a deed, and that he has said memorandum at his house; defendant's counsel served said Walden with a subpœna *duces tecum* to produce said memorandum before the Commissioner to be used in evidence on the next day, and that although said Commissioner continued to examine witnesses in said case that day and all of the following day, said Walden did not produce said memorandum, nor make any answer whatever to said subpœna *duces tecum*. The Court rejected said evidence.

Defendant's counsel excepted. (See page 31 of the printed record.)

After the evidence had been submitted to the jury, the presiding Judge charged the jury, among other things, as follows:

"Upon the question of the validity of the alleged deed, the cir-

cumstance that a claim was made for three thousand acres, and no claim was made for the one thousand five hundred acres, has been urged as against its validity, and it becomes a question for you to consider, whether it is a necessary or probable presumption that, in the event of the loss of two deeds from two different parties, and under the circumstances of this case, should or should not each be equally well remembered, and so well remembered as to be established and rights under it demanded? One, you will remember, was from the father-in-law of Mrs. Riddle to his son, in trust for her and her children, and actually passed a grant and possession at the time it was made. In the other, the grantor was also the grantee, and it, therefore, passed but an equitable title, and did not become an actual conveyance. Under these circumstances, is it a necessary or a probable presumption that, if the deed granting and conveying title and possession should be sufficiently well remembered in its date and terms as to be readily established, the other, making no such conveyance of possession, should have been as well remembered, or if, whether the fact of not urging it at the same time, is presumptive evidence that it had never been made."

To this charge defendant's counsel excepted, because it did not fairly and fully state the bearing of the fact and circumstances referred to therein on the point in issue, nor correctly define the legal effect of the deed from William C. Riddle to himself as trustee for his wife and children, and because the inference drawn and suggested in said instruction were not authorized by the circumstances recited, nor by any evidence in the case. (See page 32 of the printed record.)

The Court also instructed the jury as to their finding on the first issue submitted, that:

"The absence of any evidence upon the subject of the deed upon the trial of the claim for three thousand acres, which would have been immaterial and irrelevant in the pending issue, should have no weight in this consideration."

Defendant's counsel excepted to this instruction, claiming that the evidence shows that, on the trial of the claim for the three thousand acres, William C. Riddle was offered as a witness to prove what notice he gave defendant prior to, or at the time of the execution of the mortgage, as to the existence of any trust claim on the lands mortgaged, and that he was asked and undertook to testify precisely what he told defendant as to there being any such claim or claims,

and that this being so, his failure to testify that he told defendant of any trust claim to the one thousand five hundred acres now in dispute, is a very important circumstance, as tending to show that, in fact, no notice of any claim for the one thousand five hundred acres was given to defendant, and tending further to show that said Riddle's evidence, taken in the present case, is not worthy of belief, because when he testified in the claim case for the three thousand acres, and when the transaction was fresher in his recollection, he did not claim that the notice he gave defendant prior to the mortgage had any reference whatever to a trust deed for one thousand five hundred acres of the land mortgaged, but expressly stated that the notice he gave was about the three thousand acres only. (See page 33 of the printed record.)

On the second issue submitted, the Court gave the jury the following instructions:

"So, if you find in this case that any such notice came to the knowledge of B. J. Wilson at any time during the transactions, or advances which finally led to the taking of the mortgage as security, and which it is claimed was made upon the credit of this property, as would put a reasonable man upon his guard and induce him to make an investigation as to the true state of affairs, at any time before the sale under the mortgage, you will find that he had notice, and state in your finding when the notice was had, whether before the mortgage or before the sale; otherwise you will find that he had no notice."

Defendant's counsel excepted to said instructions, because:

1. It directed the jury that notice at any time during the transactions or advances which finally led to the taking of the mortgage as security, is sufficient notice, whereas it is claimed that the jury should have been instructed that the notice ought to have been at the time the mortgage was made, or whilst the parties were in treaty about the mortgage, or that in some other way the notice ought to have been connected with the making of the mortgage.

2. Because said instruction was not authorized by the evidence in the case; and

3. Because it was too vague and indefinite, and did not sufficiently explain what sort of notice was required; that it should have informed the jury that notice in some way should have been given of the claim

now set up, and that, too, in connection with the treaty for, or the making of the mortgage. (See pages 33 and 34 of the printed record.)

The jury rendered a verdict finding that the deed of trust was a true, valid and authentic instrument, executed at the time it purports to be, and that B. J. Wilson had notice of the existence of the trust deed at or before the execution of the mortgage of May 5th, 1870, and before the Sheriff's sale in 1876. (See pages 29 and 30 of the printed record.)

The Court accepted this verdict as a correct finding, and made a decree in accordance therewith. (See pages 34 and 35 of the printed record.)

The defendant in said case and appellant in this Court now assigns as error—

1. The refusal of the Court to allow the answers of the defendant to the bill of complainants to be read and used as evidence in said case, so far as the same were responsive to the allegations of the bill, and erred in not considering said answers so far as responsive in making up the decree in said case.

2. The refusal by the Court to allow the mortgage fi. fa. in favor of said Wilson & Co., and against said Riddle, with the Sheriff's levy thereon, and the Sheriff's deed to Wilson to the land sold, including the property in dispute, to be introduced in evidence on the trial of the issues submitted to the jury; and because the Court refused to consider said papers as evidence in making up a decree in said case.

3. The refusal of the Court to allow the petition filed by Mrs. Riddle, in 1876, to establish the alleged lost deed from Anderson Riddle to William C. Riddle, in trust, etc., to be introduced in evidence on the trial of the issues submitted to the jury; and the Court's refusal to consider said petition as evidence in making up the decree in said case.

4. The refusal of the Court to allow the fact, certified to by the Commissioner before whom Ira Walden was examined, as to said Walden's failure to respond to the subpœna *duces tecum* served on him, to be given in evidence.

5. The several instructions given by the Court to the jury on the issue submitted, and which were excepted to at the time, and reference to which has already been made.

6. The acceptance by the Court of the verdict of the jury as a correct finding on the issues submitted under the evidence in said case.

7. The decree rendered by the Court in said case, appellant claiming and insisting that said decree is contrary to the law as applicable to the evidence in said case.

8. That said verdict and the decree rendered in said case are each and both unsupported by the law and the evidence introduced on the hearing or embraced in the record.

9. The Court erred in holding that the voluntary deed was good against a purchaser for value, even if such purchaser had notice of the voluntary deed at the time of the purchase.

10. The Court erred in holding that the evidence in this case was sufficient to charge Wilson & Company, the mortgagees, and B. J. Wilson, the purchaser at Sheriff's sale, with notice of such voluntary deed.

11. The Court erred in holding that the evidence in this case was sufficient to establish the fact that the trust deed relied on was a genuine instrument and executed at the time it purports to bear date.

12. The Court erred in not decreeing that complainant's bill be dismissed.

It is not in conformity with the practice in Equity to file exceptions to the rulings of the Chancellor in the progress of the trial, but in this case it was deemed best to pursue that course, because no other practicable way suggested itself, of showing this Court what influences operated on the jury in rendering their verdict, and under what views of the law the Court acted in making the decree complained of.

In rendering said degree, the Court disregarded the doctrine for which defendant's counsel contended and still contends, namely: that a voluntary settlement is void as against a bona fide purchaser or mortgagee even with notice. (See Volume 1, Part 1st, White & Tudor's Leading Cases in Equity, Edition of 1876, marginal page, 284; Dolphin vs Aylward, 4th, L. R. Ho. Lo., page 486; Buckle vs Mitchell, 18th Veasy, page 100.)

But even if the bona fide purchaser or mortgagee is affected by notice of such voluntary deed as that relied on by complainants, it is most earnestly insisted that the evidence in this case was not suffi-

cient to show such notice. The *onus* was on complainants. The defendant's answers, responsive to the allegations of their bill, had denied positively all notice or knowledge of said deed, and such being the case, such answer could only be overcome by the testimony of two credible witnesses, or one such witness and strong corroborating circumstances. (See Union Bank vs. Geary, 5th Peters, 99; Randell vs. Brown, 2d Howard, 406; Carpenter vs. Providence Insurance Co., 4th do, 185; Tobey vs. Leonards, 2d Wallace, 423; Voorhees vs. Bonesteel, do, 16; Vigel vs. Hopp, 104 U. S., 441.)

In this case it is true that Mr. Riddle testifies that, in 1869, whilst Wilson was at his house, and they were riding together through Riddle's plantation, Wilson having asked if he could buy the land now in controversy, he had told Wilson of the trust deed in favor of Mrs. Riddle and her children, (see page 102 of the printed record,) but on a previous examination in this same case, the only notice Riddle had testified to was that, in 1866, when Wilson requested him to execute a mortgage upon his land to assist Wilson in raising money in New York, he had told Wilson there was some old deeds on a part of the said lands. (See page 45 of the printed record.)

It will be seen, therefore, that in Riddle's first examination he claims to have given whatever notice he gave Wilson, in 1866, about four years before the mortgage, under which Wilson now claims title, was executed; and that the only notice he claims to have given was that there was some old deeds on part of the lands, without specifying what sort of deeds or what part of said land they embraced, or to whom they had been made.

Again. It was shown by testimony, introduced by defendant, that when Riddle testified in the claim case relating to the three thousand acres, the only notice he then testified he had given Wilson respecting the trust estate in these lands, was that when he agreed to execute the mortgage on the eight thousand acres of the land, he told Wilson of the deed on the three thousand acres, but that the papers were destroyed and he did not expect they would be established, and that this was in 1867, three years before the mortgage of May, 1870, was executed. (See pages 129 and 130 of the printed record.)

Moreover, it appears that he did not even testify to having given notice of the trust deed to the three thousand acres until he had been reintroduced on the trial of the claim case for that specific purpose, and that only. (See page 129 of the printed evidence.)

The evidence claimed to be corroborative of Riddle's testimony as to notice, is :

1. From Green Riddle, a negro who had been living several years on Mr. Riddle's lands. His testimony bears internal evidence of its unreliability, and besides fixes no time when Wilson is said to have admitted that he heard of "some trust deed." Nor does it indicate what trust deed was referred to, whether that relating to the three thousand acres or the one alleged to embrace the lands in controversy. (See page 77 of the printed record.)

2. The testimony of Simon S. Thomas, whose testimony is contradictory of the evidence he gave on the trial of the claim case, and, moreover, shows on its face that the trust deed referred to was the deed relating to the three thousand acres, (see pages 87 and 131 of the printed record.) It will be observed, also, that Mr. Thomas testified on the claim case that Wilson did not say when it was that Riddle told him about the old deed referred to.

3. The testimony of Arden Vining (see page 78 of the printed record,) shows clearly that the trust deed referred to was the one relating to the three thousand acres, besides, his testimony is so unreliable that it is wholly unworthy of belief.

The only corroboration, therefore, of Riddle's testimony is the evidence of witnesses, which, even if true, relates to a different trust deed from the one relied on by complainants in this case, namely: the trust deed to the three thousand acres of land involved in the claim case decided years ago in favor of Mrs. Riddle and her children.

On the other hand, Wilson positively denies that any notice of the trust deed relied on was given to him or that he ever had the slightest intimation of the existence of such deed, either when the mortgage was executed or when the sale took place, and his testimony is supported by all the probabilities in the case. It is not reasonable to suppose that he would have taken a mortgage to secure so large a sum of money as Riddle owed the firm of Wilson & Co., if he had been advised at the time or before, that there were trust deeds in favor of Mrs. Riddle and her children for four thousand five hundred acres of the ten thousand acres embraced in the mortgage; nay, it is altogether unreasonable to suppose that he would have accepted such security, and have made additional advances on it if he had known of the existence of either of the trust deeds which have been resurrected since his purchase. It is equally unreasonable to suppose that whilst

litigating with Mrs. Riddle and her children respecting their claim to the three thousand acres of land, he would have gone about telling Mrs. Riddle's neighbors and friends that Riddle had given him notice of the deed to the three thousand acres about which he was then litigating, as Green Riddle, Simon Thomas and Arden Vining testify he did.

Clearly, therefore, the overwhelming weight of the testimony as to notice was with the defendant, whose answer responsive to the allegations of the bill was not overcome; nor was the burden resting on the complainants to show notice, they had affirmed to exist, met by the evidence introduced for that purpose.

As to the notice which Gilmore claims to have given at the Sheriff's sale, vague and indefinite as it was, it seems to have been given without the knowledge or authority of Mrs. Riddle. (See page 73 of the printed record.)

Notice to be binding must proceed from some person interested in the property. (See White & Tudor's Leading Cases in Equity, edition of 1876, top page 121, and authorities cited.)

Again, the notice which Riddle claims to have given was not given, as has been seen, when Wilson was in treaty with him in reference to taking the mortgage, but was given the year before the mortgage was made, as Riddle testifies, when he and Wilson were taking a ride through Riddle's plantation, and when no negotiations appear to have been pending with reference to the execution of the mortgage.

It is respectfully insisted that even if notice was given under such circumstances, it would be unavailing to defeat a mortgage given a year or so afterwards. (See Hamilton vs. Royse, 2d Sch. & Lef., 377; Henry against Morgan, 3d Binney, 497; Boggs against Varner, 6th Watts & S., 469; Bracken vs. Miller, 4th Watts, 111; 2d Sugden on Vendor and Purchaser, 277.

Notice to affect a *bona fide* purchaser or mortgagee should be given at the time of the transaction, or in immediate connection therewith. (See authorities just cited.)

Constructive notice of a prior voluntary deed will not effect a *bona fide* purchaser or mortgagee, even if notice will effect such a person at all. The notice must be actual. Registry of such voluntary deed will not affect such purchaser or mortgagee. (Fleming vs. Townsend, 6 Ga., 103; Fowler vs. Waldrop, 10 Ga., 350; Black *et al.*, vs. Thornton, 31 Ga., 641.)

As to the genuineness and age of the trust deed. whilst the evidence is conflicting, the weight of the testimony, all things considered, is, I think, in favor of the appellant's theory that the deed is younger than the mortgage.

It is true that Riddle and wife and their old neighbor Walden (the Justice of the Peace) testify that the trust deed was executed at the time it bears date, and that Langmade (a lawyer who has resided for many years in the same county with the Riddle family) testifies that he read a copy of the deed, on the records of the County, in the Fall of 1853, or shortly thereafter. It is also true that a number of the relatives and neighbors of Mr. and Mrs. Riddle testify to having seen this trust deed in the years 1879 and 1880. But there are strong reasons for suspecting that much, if not all, this evidence was manufactured for the occasion.

1. No satisfactory reason is given why nothing was said about this trust deed when the claim was interposed for the three thousand acres of the same body of lands, if the deed was then in existence.

2. If Riddle and his wife, and so many of their neighbors and relatives, knew of this deed, in 1877, when Wilson bought the land in controversy, why was he permitted to hold and occupy it so long without any effort made to eject him? If they thought the deed was lost, as Mrs. Riddle testifies, why were no steps taken to establish a copy as in the case of the three thousand acres.

3. If the family knew the deed was genuine, and executed at the time it bears date, why did James M. Minar, (one of Mrs. Riddle's sons-in law,) carry it about in the neighborhood to ascertain if the neighbors would recognize the genuineness of the signature of the Justice of the Peace whose name was attached to it as a subscribing witness?

4. If the evidence of Truluck is false, why was not James M. Minar examined as a witness to deny it?

On the other hand, Truluck (a perfectly disinterested witness,) testifies positively that he wrote the trust deed since the land was purchased by Wilson. (See pages 138-9 printed record.)

Moore, (another disinterested witness,) after stating very modestly how far he claims to be an expert in such matters, testifies unqualifiedly that, in his opinion, the body of the trust deed was written about the same time as the endorsement on the back signed by

A. M. Mays, Clerk, which was October 5th, 1881. (See page 145 printed record.)

See also the evidence of this witness on page 144 and page 147 *et seq.*, printed record.

Our theory of this branch of the case is that the parties, who conspired to get up this deed, procured the half sheet of paper on which an old deed was printed or written, which half sheet had on it the endorsement of E. A. Jernigan, the then Clerk, only; and that this trust deed was written on the opposite side of the half sheet of paper. Thus the endorsement of the then Clerk, relating to the registry of another old deed, was made to appear to relate to the registry of the trust deed relied on by the complainants in this case.

There is good reason also for believing that W. C. Riddle's signature to the deed was not genuine. (See evidence of Goldsmith and others, p. 149 *et seq.*, printed record.) But whether his signature is genuine or not, we respectfully insist that the weight of the credible testimony is that the trust deed is much younger than the mortgage by virtue of which appellant derives title. At all events, the evidence on this point is in serious conflict, and we respectfully claim that the doctrine applies, that:

In serious conflict of evidence, Bill may be dismissed on ground that complainant fails to establish facts on which he claims relief. In support of this doctrine, I refer to Hewitt vs. Campbell, 104 U. S., 103.

CLIFFORD ANDERSON,
Counsel for Appellant.

A. M. Mays, Clerk, which was October 5th, 1881. (See page 145 printed record.)

See also the evidence of this witness on page 144 and page 147 *et seq.*, printed record.

Our theory of this branch of the case is that the parties, who conspired to get up this deed, procured the half sheet of paper on which an old deed was printed or written, which half sheet had on it the endorsement of E. A. Jernigan, the then Clerk, only; and that this trust deed was written on the opposite side of the half sheet of paper. Thus the endorsement of the then Clerk, relating to the registry of another old deed, was made to appear to relate to the registry of the trust deed relied on by the complainants in this case.

There is good reason also for believing that W. C. Riddle's signature to the deed was not genuine. (See evidence of Goldsmith and others, p. 149 *et seq.*, printed record.) But whether his signature is genuine or not, we respectfully insist that the weight of the credible testimony is that the trust deed is much younger than the mortgage by virtue of which appellant derives title. At all events, the evidence on this point is in serious conflict, and we respectfully claim that the doctrine applies, that:

In serious conflict of evidence, Bill may be dismissed on ground that complainant fails to establish facts on which he claims relief. In support of this doctrine, I refer to Hewitt vs. Campbell, 104 U. S., 103.

CLIFFORD ANDERSON,
Counsel for Appellant.

23-608

FILED
NOV 19 1887
JAMES H. McKENNEY
CLERK.

UNITED STATES SUPREME COURT.

BENJAMIN J. WILSON, APPELLANT,

VS.

WILLIAM C. RIDDLE,

TRUSTEE, ETC., ET AL., APPELLEES.

IN EQUITY. APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

SUPPLEMENTAL ABSTRACT AND BRIEF.

CLIFFORD ANDERSON,
COUNSEL FOR APPELLANT.

MACON, GEORGIA:
J. W. BURKE & CO., PRINTERS, STEREOTYPERS AND BINDERS.
1887.

BENJAMIN J. WILSON, Appellant,

vs.

WILLIAM C. RIDDLE, Trustee, etc., *et al.*, Appellees.

In Equity. Appeal from the Circuit Court of the United States for the Southern District of Georgia.

SUPPLEMENTAL ABSTRACT AND BRIEF.

After the evidence introduced by complainants and by defendant had been submitted and read to the presiding Judge, sitting as Chancellor, he over the objection of the defendant's counsel, submitted the issues of fact arising in said case to a jury, to which defendant's counsel excepted. (See page 30 printed record.)

Appellant assigns such submission of the issues of fact to a jury as error.

If the Chancellor thought it a proper case to submit issues of fact arising in said case to a jury, he should have made an order directing a trial by a jury at law on issues of fact framed by the Chancellor, on proper pleadings for that purpose, and the verdict of the jury on issues so formed and directed to be tried at law, should have been duly certified by the Court of law to the Chancellor. This was not done, but a jury was called into the Court of Chancery and issues submitted to it by the Chanchellor, who presided as such, and directed the jury as to their findings. (See pages 29 and 31 of the printed record.)

Appellant assigns the whole proceeding as to calling in a jury and all that was done in connection therewith and relative to the verdict

rendered as error; and claims that no weight should have been given by the Chancellor to the verdict of the jury as it was not properly before him, and further, that no weight should be given to said verdict in this Court.

Where a Chancellor desires the aid of a jury in determining issues of fact, he should form issues and order them to be tried by a jury in a Court of law, and such issues should be submitted to the jury on proper pleadings (unless waived, which was not done in this case) framed for that purpose; and the verdict of the jury, when rendered, should be certified to the Chancellor by the Court of law in which it was found. See Johnson vs. Harmon, 94 U. S. page 378, and authorities there cited, viz: 2 Daniel's Ch. Pr. (4th Amer. Ed.) 1,120; Watkins vs. Carlton, 10 Leigh, 560. 2 Daniel's Ch. Pr. (1 Amer. Ed.) 1192-3: 3 How. 691. CLIFFORD ANDERSON,

Counsel for Appellant.

rendered as error; and claims that no weight should have been given by the Chancellor to the verdict of the jury as it was not properly before him, and further, that no weight should be given to said verdict in this Court.

Where a Chancellor desires the aid of a jury in determining issues of fact, he should form issues and order them to be tried by a jury in a Court of law, and such issues should be submitted to the jury on proper pleadings (unless waived, which was not done in this case) framed for that purpose; and the verdict of the jury, when rendered, should be certified to the Chancellor by the Court of law in which it was found. See Johnson vs. Harmon, 94 U. S. page 378, and authorities there cited, viz: 2 Daniel's Ch. Pr. (4th Amer. Ed.) 1,120; Watkins vs. Carlton, 10 Leigh, 560.

CLIFFORD ANDERSON,
Counsel for Appellant.

123-60P

FILED
NOV 30 1887
JAMES H. McKENNEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES.

BENJAMIN J. WILSON, APPELLANT,

VS.

WILLIAM C. RIDDLE,

TRUSTEE, ETC., ET AL., APPELLEES.

IN EQUITY. APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

ADDITIONAL BRIEF OF CLIFFORD ANDERSON,

COUNSEL FOR APPELLANT,

(In reply to Brief of Counsel for the Appellees.)

MACON, GEORGIA:
J. W. BURKE & CO., PRINTERS, STEREOTYPERS AND BINDERS.
1887.

BENJAMIN J. WILSON, APPELLANT,

VS.

WILLIAM C. RIDDLE,

As Trustee for his Wife, Seany Ann S. Riddle, and Children, *et al.*, Appellees.

In Equity. Appeal from the Circuit Court of the United States for the Southern District of Georgia.

ADDITIONAL BRIEF IN REPLY TO BRIEF OF COUNSEL FOR APPELLEES.

1st. The Chancellor in the Court below did not hold that the record of the voluntary deed of April, 1853, was notice to Wilson & Co. The record, if one was ever made, was destroyed by fire in 1855, eleven years before Riddle's first mortgage to Wilson & Co. How could Wilson & Co., have been charged with notice of such a record?

If the Chancellor held the record of the deed to have been notice to the mortgagees, under these facts, it was error.

Such notice must have existed "as affects the conscience" of the purchaser or mortgagee. See Jordan vs. Pollock, 14 Ga., 158, and authorities there cited; 2d Pomeroy's Eq. Jur., Sec. 649; Thrasher *et al.* vs Partee and wife, 37 Ga., 392; Lane *et al.* vs Partee and wife, 41 Ga., 202.

Besides, does Section 1778 of the Code of Georgia embrace a voluntary *conveyance* by the husband and father for the benefit of his wife and children, executed long after the marriage, and not in pursuance of marriage articles? The Statute provides for the record of marriage contracts and voluntary *settlements* made by the husband on the wife. Is a voluntary *settlement* by the husband on the wife the same thing as a voluntary *conveyance* by the husband and father for the benefit of the wife and children?

Is not such a *settlement* an instrument based on marriage as the consideration, and is not a voluntary conveyance, after marriage, an entirely different thing? Is not the latter simply a *gift* made by the father and husband to his wife and children? See Harper vs. Scott, 12 Ga., 131. The Court, in that case, decides that a voluntary deed by husband for benefit of his wife is void against a purchaser without actual notice and that the registry of such a deed is not notice. See, also, Cathright *et al.*, *vs.* Robinson, 5 Peters, 279; Kitchen *vs.* Bedford, 13 Wallace, 413, as to the deed relied on by appellees, being a deed of gift and not a *settlement*. See, also, 32 Ga., 632.

The case of Adair *et al.* vs. Davis, 69 Ga., 769, (cited by counsel for appellees) does not seem to be supported by the cases on which the decision is based. Horn, Trustee, vs. Ross & Leitch, 20 Ga., 210, was a case involving a post-nuptial settlement, executed to carry out marriage articles; and Cummings vs. Boston & Gunby, 25 Ga., 276, was the case of an ante-nuptial settlement. The reference to 29 Ga., 405, must be a mistake. I find no case in 29 Ga. ruling the principle contended for.

Notice at the Sheriff's sale in 1876 could not affect mortgagees without notice, whose mortgage was executed in 1870.

Besides, the notice given by Gilmore, at the Sheriff's sale, was insufficient:

(a). Because not given by authority of Mrs. Riddle or any of the *cestuis que trust*. (See her testimony already referred to.)

(b). Because it related to *all* the land being sold, and not to the fifteen hundred acres sued for.

(c). Because it was vague and uncertain, and indicated no source whence fuller information could be obtained.

(d). Because, as Mrs. Riddle had interposed a claim for three thousand acres of the land levied on, and no more, as the property of herself and children, Wilson had the right to presume that they made no claim to the balance of the land.

As to the insufficiency of the notice given by Gilmore, see Black *et al.* vs. Thornton, 31 Ga., 659.

Riddle was at the sale, (see his testimony on page 46 of the printed record.) If he then knew of the deed from himself, now relied on, why did he not cause specific notice of it to be given? And is it not strange that Langmade, (one of the attorneys of the appellees in this case) should have searched the records to find a copy of the deed, for examination, instead of asking Riddle, the Trustee, to let him see the original?

CLIFFORD ANDERSON,
Counsel for Appellant.

13-608

Office Supreme Court U. S.
FILED.
NOV 26 1887
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1887.

No. 86.

BENJAMIN J. WILSON, *Appellant*,

vs.

WILLIAM C. RIDDLE, as Trustee for his wife, SENY ANN S. RIDDLE and children; SENY ANN S. RIDDLE, wife of WILLIAM C. RIDDLE; ANNIE E. MINAR, wife of T. M. MINAR (formerly ANNIE E. RIDDLE) *et al.*

BRIEF OF GEORGE A. MERCER,

OF COUNSEL FOR APPELLEES.

SAVANNAH, GA.
TOWNSEND PRINTER AND BINDER.
1887.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1887.

No. 86.

BENJAMIN J. WILSON, *Appellant*,

vs.

WILLIAM C. RIDDLE, as Trustee for his wife, SENY ANN S. RIDDLE and children; SENY ANN S. RIDDLE, wife of WILLIAM C. RIDDLE; ANNIE E. MINAR, wife of T. M. MINAR (formerly ANNIE E. RIDDLE) *et al.*

Brief of Attorney for Appellees.

The suit, resulting in a decree for the appellees, from which this appeal is taken, was originally brought by said appellees against said appellant in the Superior Court of Washington County, in the Southern District of Georgia, and was thence removed by the appellant, under the Act of Congress of March 3d, 1875, to the Circuit Court of the United States

for the Eastern Division of the Southern District of Georgia.

The original action was complaint for the recovery of land and mesne profits under the Code of Georgia, and its purpose was to obtain equitable relief on the common law side of the Court, in accordance with the law and practice in said State.

Code of Georgia of 1882, sec. 3082.

Palmer vs. Simpson, 69 Ga., 799.

As a ground for such equitable relief to the *cestuies que trust*, the declaration alleged that the said William C. Riddle, trustee, in violation of his trust, refused to bring suit for the recovery of said lands, or to collect the rents and profits thereof.

See printed Record, p. 2.

The Supreme Court of Georgia having ruled that in a suit of this nature the trustee was a necessary party—see Boyd vs. England, 56 Ga., 600—the declaration was amended in the United States Court after removal, and said William C. Riddle, trustee, was made a party to the suit.

No objection whatever was made to this amendment, and no exception taken by said appellant.

See printed Record, p. 13.

Subsequent to the amendment of the action, and on December 2d, 1882, the Hon. Don A. Pardee, Circuit Judge, at the suggestion and instance of said appellant, ruled that the relief sought by plaintiffs in the State Court must be prosecuted in the United States Court on the equity side of said Court, and not on the common law side thereof; and he passed an order that the case stand continued for the term; that it be placed on the equity docket, and that plaintiffs reform their pleadings so as to present their cause of action in an equitable shape.

See printed Record, p. 14.

The plaintiffs objected to this order, apprehending

that its effect might be to deprive them of their constitutional right to a trial by jury, and on December 7th, 1882, entered their motion for a rehearing on the status of the pleadings.

See printed Record, pp. 14, 15.

The pleadings were amended in compliance with the order of Judge Pardee, and the plaintiffs filed their general replication April 12th, 1883.

Printed Record, p. 23.

We submit that if Judge Pardee committed error in ordering such change in the status of the pleadings, the appellant cannot urge the same, as the alteration was made at the instance of his counsel, and the appellant would be estopped now from claiming that the action of the Court, so invoked, was illegal or improper.

In the recent case of the State vs. Gaskill, 68 Georgia R., 520, the Supreme Court decided that while a judgment obtained at the first term of the Court, in the absence of an express statute allowing it, was void, the defendant who consented to its being so taken was estopped from attacking its validity.

In Van Leonard, trustee, vs. The Eagle and Phœnix Manufacturing Company, 60 Ga., 545, the Supreme Court held that a party could not insist upon error to a judgment rendered in his own behalf at his own instance.

In Daniels vs. Tearney, 102 U. S., 415, this Court held that one who had availed himself of an unconstitutional law was estopped in subsequent litigation from averring its unconstitutionality as a defence.

Taking advantage of a former recovery as a valid judgment will estop the party from reversing it on error.

Herman's Law of Estoppel, sec. 165.

See Teny vs. Abraham, 93 U. S., 38 (2).

When the case came on to trial the plaintiffs in said Circuit Court, believing that they were entitled to a hearing before a jury under the statute, made application to the Court to submit the issues of fact arising in the case to a jury. The Court did submit the issues of fact to a jury, and the appellant objected and took exception to the action of the Court.

See printed Record, p. 30.

The appellant was evidently unwilling to have his case tried by a jury of the vicinage, and transferred it to the United States Circuit Court sitting in Savannah. He was unwilling to have it tried by a jury in Savannah; insisted that it was an equity case and should be placed upon the equity docket, and at the trial opposed the prayer of the appellees to have the issues of fact submitted to a jury, and assigns error upon such submission.

The mere fact that Judge Pardee directed that the pleadings should be put into an equitable shape, provided the issues of fact covered by such pleadings were passed upon by a jury, would seem to be immaterial. The forms of pleadings in civil cases used in any State are now used in the United States Courts sitting in such State. In Georgia no form of pleading is prescribed. Special pleadings are abolished. Ordinary suits in the Superior Court shall be by petition to the Court, signed by the plaintiff or his counsel, plainly, fully and distinctly setting forth his charge or demand, and no want of form shall be cause of delay if this article is substantially complied with.

Code of Georgia, secs. 3332, 3346.

A suit to recover land in Georgia, cast into the shape of a bill in equity, would accomplish the same result as the most technical declaration. The form of the suit was therefore immaterial.

But the Act of Congress provides that issues of

fact in the Circuit Courts shall be by jury, except in cases of equity and of admirality and maritime jurisdiction.

Revised Statutes, sec. 648.

Had the Court refused the prayer of the appellees to refer the issues of fact to a jury, we submit that they would have had good ground for exception.

The Court was therefore right to refer to a jury issues of fact in an action of complaint to recover land and mesne profits under the State practice, although the Circuit Judge had ordered the suit to be recast into an equitable shape.

But concede, for the sake of the argument, that the action was transformed into a strict equity suit, and that the Chancellor was not bound to summon a jury to his aid, he at least had a discretion to do so.

The ninetieth equity rule provides that in all cases where the rules prescribed by this Court, or by the Circuit Court, do not apply, the practice of the Circuit Court shall be regulated by the practice of the High Court of Chancery in England so far as applicable.

The High Court of Chancery has a discretion to submit any issue of fact to a jury, to be heard either in a common law court or before itself. If the Court thinks it best that a question should be tried before a jury, a jury can be had.

See vol. 2, Daniell's Chancery Pleading and Practice, 5th American edition, pp. *1071, *1072, *1081.

The fact that there was no need for a jury will not vitiate the decree.

Idem., p. *1147, n. 10, citing Pfeifier vs. Riehn, 13 Cal., 643.

And it is too late to object on error that there was no formal order directing an issue, and that the Court

had without such order considered the finding of the jury.

Idem., citing Williams vs. Bishop, 15 Ill., 533.

2 Daniell's Chancery Practice, p. *1147; n. 10, is cited by this Court in its opinion in the case of Prout vs. Roby, 15 Wallace, p. 475. This Court has expressly decided that Equity Courts may refer doubtful questions of fact to a jury.

Garsed vs. Beall, 92 U. S., 695.

In Massachusetts, New York and other States, the finding of the jury upon the issue submitted to them, if not set aside for good cause shown, is regarded as settling the facts in issue conclusively.

Idem., n. 8.

In the United States Courts a different rule appears to have been adopted: The Court has a discretion to set aside the verdict and grant a new trial, or to disregard it, or to adopt it altogether, or *sub modo*.

Story, Judge, in Allen vs. Blunt, 3 Story, 746.

Prout vs. Roby, 15 Wallace, 475.

Basey vs. Gallagher, 20 Wallace, 680.

In the last case this Court say that ordinarily, where there has been an examination before a jury of a disputed fact and a special finding made, the Court will follow it. But whether it does so or not must depend upon the question whether it is satisfied with the verdict.

In Garsed vs. Beall, 92 U. S., 695, this Court say if such finding of a jury is satisfactory to the Chancellor the practice is to regard it as the proper foundation for a decree.

Such findings are regarded as influential in an appellate court, but they are not conclusive.

We submit that the Court committed no error in referring the issues of fact in the case to a jury.

The questions of fact thus referred to the jury were the vital questions in the case:

First. "Is the deed of Trust presented a true, valid and authentic instrument executed at the time it purports to be.?"

Second. "Did the defendant, B. I. Wilson, have notice of the existence of this trust deed at or before the execution of the mortgage by plaintiff to defendant, May 5th, 1870, or before the sheriff's sale in 1876.

To each of these questions the jury responded in the affirmative.

The appellant made certain objections and filed exceptions to the method of submitting these issues to the jury.

He claimed that the bill of complainants and the answer of defendants should be read to the jury, and that the answers of defendants, so far as responsive to the allegations of the bill, were evidence for the defendant.

We submit in limine that if the reference of issues of fact to the jury was discretionary with the Court, and the Court was not bound by the findings, the mode and manner of such reference was also discretionary.

It is well established that this Court will not review on error any matter resting in the discretion of the Court below.

Liter vs. Green, 2 Wheaton, 308.

The questions referred to the jury were clear and explicit, and the reading of the bill and answer to them could not elucidate those questions or aid the jury in reaching a conclusion.

The answers of the defendant were not evidence in his behalf, because, as stated by the Court, he had been sworn as a witness in said case, and had testified as such in his own behalf to the same effect.

See printed Record, p. 30.

The answer was not evidence, because an answer of defendant under oath was expressly waived by plaintiff.

See printed Record, p. 17.

And the amendment to equity rule 41, of December term, 1871, declares that the answer shall not be evidence under such circumstances.

In the submission of said issues of fact to the jury the defendant offered to the jury a mortgage *fi. fa.* in his favor against said William C. Riddle for some $80,000, the sheriff's levy of the same on ten thousand acres of land, including the fifteen hundred acres involved in the suit, and the sheriff's deed to said land. The Judge refused to allow these papers to be read to the jury, but allowed the facts to be stated to them. Defendant excepted.

See printed Record, pp. 30, 31.

We submit that this was a matter within the discretion of the Court, and that the reading of such papers would have tended only to perplex the jury and to withdraw their attention from the issues referred to them, which said papers in no way illustrated.

The defendant next offered to the jury a petition filed by Mrs. Seny Ann S. Riddle in 1876 to establish a lost deed made by Anderson Riddle, father of said William C. Riddle, to said William C. Riddle, in trust for his wife and children. This the Court rejected, but allowed the fact to be stated that such a petition was filed, and the defendant excepted.

See printed Record, p. 31.

The deed thus offered embraced a tract of three thousand acres entirely distinct from the fifteen hundred acres in litigation, and rested upon a distinct title. It had no relevancy whatever to the question at issue. The same petition could not in-

clude two distinct deeds to separate parcels of land involving different titles. Each made a distinct case.

The deed for three thousand acres was to be used in a claim interposed by Mrs. Riddle for that particular tract of land.

The Supreme Court of Georgia has decided that a claim is merely a cumulative remedy, and that a party may bring trover or ejectment at its option. Mrs. Riddle and her children chose to assert their right to the fifteen hundred acres by an action of complaint for the land and mesne profits. This they were at perfect liberty to do, and were not obliged to interpose a claim.

See Whittington vs. Wright, 9 Ga. 28 (3).

Defendant next offered to the jury as evidence the fact, as certified to by the commissioner taking the testimony, that Ira Walden, a witness for plaintiffs, had been served with a subpœna *duces tecum* on one day to produce a memorandum he stated he had made, and failed to appear before the commissioner on the succeeding day and produce it. This evidence the Court rejected, and defendant excepted.

See printed Record, p. 31.

We submit that this was no evidence to go before the jury. It was wholly irrevalent to impeach Ira Walden or otherwise.

The Statutes of Georgia provides that residents of the County must be served with a subpœna *duces tecum* ten days before they are required to appear and produce the paper.

Code, sec. 3514.

The hearing should have been continued to make the subpœna legal. This could have been done had defendant really wished to see the memorandum.

The fact that a witness failed or refused to produce a paper under subpœna could not be established by a mere statement of the commissioner.

See printed Record, p. 107.

The defendant further excepted to the charge of the Judge to the jury upon the effect of a failure to interpose a claim for the fifteen hundred acres in litigation when it appeared that a claim for another tract of three thousand acres had been interposed.
See printed Record, p. 32.

Counsel for defendant based his objection on three grounds:

First. Because the charge did not fairly or fully state the bearing of the fact or circumstance referred to therein on the point in issue. Counsel does not point out in what respect or to what extent the charge did not fairly or fully state, etc.

Second. Counsel excepts to that part of said instruction as erroneous which defines the legal effect of the deed from William C. Riddle to himself as trustee. Counsel fails to specify which particular part of said instruction he objected to.

Third. Counsel excepts to the inferences drawn and suggested in said instruction to the jury. No particular inferences are specified.

We submit that these exceptions are not sufficiently precise, and that the record leaves it doubtful just what the objections were.

The Supreme Court of Georgia has decided that exceptions to the admissibility of testimony on the ground that it is illegal are insufficient without specifying wherein it is illegal.
Ingram vs. Little, 14 Ga., 173.

A general exception to the charge of the Court below is insufficient. The particular portions of the charge objected to must be specified.
Smith vs. Atwood, 14 Ga., 402.

It is not a sufficient assignment of error to set out

in extenso the charge of the Court, and to say that each and every part of it is error.

Lopez vs. McArdle, 41 Ga., 414.

In Railroad Co. vs. Varnell, 98 U. S. R., 479, this Court say that exceptions to the charge of the Court which are in general terms, and do not clearly and specifically point out the objectionable part of it, cannot be sustained as a ground for reversing the judgment.

We have already referred to the legal bearing in Georgia of the interposition of a claim in one case and not in another.

It was not necessary or proper for the Judge to charge the jury upon the legal effect of a deed from William C. Riddle to himself as trustee. This was a question of law for the Court. We do not understand that the Judge did so charge. He only directed the attention of the jury to the fact that a deed from one party to another involved a change of possession, whereas a declaration of trust from a party to himself as trustee involved no such change.

We submit that this portion of the charge of the Court to the jury was fair and correct.

The defendant, through his counsel, objected to the following charge of the Court to the jury: The absence of all evidence upon the subject of the deed (to the fifteen hundred acres) upon the trial of the claim for three thousand acres, which would have been immaterial and irrelevant in the pending issue, should have no weight in this consideration.

See printed Record, p. 33.

We have already referred to this question. Evidence on the trial of the claim case about another and distinct tract of land, resting upon a distinct title, would clearly have been improper and inadmissible. The testimony of Mrs. Riddle and others

in the Record shows also why no such testimony was offered.

The objection to the above charge, as stated by defendant's counsel in his exception, is based upon the ground that William C. Riddle was offered as a witness in said claim case to prove that he had given defendant notice that said three thousand acres were subject to a trust, and that he did not testify at said time, and on said trial, that he had given any notice as to the fifteen hundred acres. Conceding this, we submit again that the title to the fifteen hundred acres was not then on trial, and that any testimony about them was uncalled for and irrelevant.

The Court in the charge complained of used these words: The absence of all evidence upon the subject of the deed * * * should have no weight in this consideration. The objection, as stated in defendant's exception, is that William C. Riddle, when called upon to testify as a witness in said claim case upon the subject of notice to defendant previous to the execution of the mortgage, testified that he had given notice that said three thousand acres were covered by a trust deed, but failed to testify that he had given any notice as to the fifteen hundred acres; that this was a very important circumstance and should impeach the testimony of Riddle in the present case. We submit that the Record does not show that the Court made any allusion whatever to the jury upon the subject of notice, or the effect of Riddle's testimony upon this subject, and that the error alleged in the charge is not sustained by the exception.

Had defendant desired the Court to charge the jury upon the subject of notice or want of notice in this connection, he should have requested such charge.

See Street vs. Lynch, 38 Ga., 631 (2).

See Pennock vs. Dialogue, 2 Peters, 15.

Where the Court refused a new trial because the Court did not explain what amounted to notice, no such request having been made.

The defendant next objected to the instruction of the Court to the jury upon the subject of notice, and excepted thereto.

See printed Record, p. 33.

The exception was based on three grounds:

First. That notice at any time during the transactions or advances which finally led to the taking of the mortgage as security, as would put a reasonable man upon his guard and induce him to make an investigation as to the true state of affairs at any time before making the mortgage, was held by the Court to be sufficient notice.

Second. That said instruction was not authorized by the evidence in the case.

Third. That the instruction was too vague and indefinite, etc.

Further on we will discuss the kind of notice required by the law of Georgia and the evidence in the Record bearing upon this subject.

The Record evidently does not give the full charge of the Court upon this point. As stated, it begins: "So if you find in this case that any such notice came to the knowledge of B. J. Wilson." The words "any such notice" imply that the character of the notice had been explained to the jury. These words plainly refer to something previously said which does not appear in the Record. A Court of Review cannot pass upon isolated portions of the charge of the Court below. If the entire charge is not in the Record the presumption would be that the law was correctly charged in the omitted portions.

If the charge of the Court collectively be right a

new trial will not be granted, though some isolated part of it be wrong.

Newton vs. Price, 41 Ga., 186.
See Bradstreet vs. Huntington, 5 Peters, 438.
Pennock vs. Dialogue, 2 Peters, 15.
Express Company vs. Kountze, 8 Wall., 354.

We submit, however, that these so-called bills of exception to alleged errors committed by the Court during the trial of certain issues of fact referred to a jury are not subject matter for review by the Appellate Court. In *ex parte* Story, 12 Peters, 343, this Court held that a bill of exceptions is altogether unknown in Chancery practice.

See Brockett vs. Brockett, 3 Howard, 691.
Johnson vs. Harmon, 94 U. S., 371.

Where the features of the case were similar to this, the Court held that a bill of exceptions cannot be taken on the trial of a feigned issue directed by a Court of Equity, or, if taken, can only be used on a motion for a new trial made to that Court. As the verdict may or may not have been the ground for the decree, an appeal from the latter cannot be made to turn on the Judge's rulings at the trial of the feigned issue, but must be decided upon the whole case, pleadings, evidence and verdict, giving to the latter as much effect as it is worth.

This Court then will determine this appeal upon the whole case, and the real question is what are the law and facts of the case.

On December 6th, 1883, in open Court, the Judge granted a decree in favor of the present appellees.

The Court, upon the proof submitted, found and decreed that the deed of trust presented by complainants was a true, valid and authentic instrument, executed at the time it purports to be; that the defendant, B. J. Wilson, had notice of the existence of

this trust deed at or before the execution of the mortgage made by the complainant, William C. Riddle, to defendant May 5th, 1870, and before the sheriff's sale in 1876, and that the defendant acquired no valid title to the lands embraced in said trust deed by virtue of the sheriff's deed made to him in 1876; and that said land was the property of said Seny Ann S. Riddle, and her children and grandchildren.

See printed Record, pp. 34, 35.

Whether or not the Court in granting this decree felt constrained by the finding of the jury does not appear. The Court at least concurred in the views of the jury, and the result is that the appellees rest their case and rely both upon the verdict of a jury and the decree of a Court.

The law of the case can be very briefly stated:

On April 23d, 1853, William C. Riddle, then the owner of the land in dispute, granted and conveyed the same to himself in trust for his wife, Seny Ann S. Riddle, for and during her natural life, and on her decease to such child or children as she might leave in life.

See printed Record, p. 68.

It is well settled that a father, not insolvent at the time, can make a voluntary conveyance in favor of his wife and children, which will prevail against subsequent creditors.

See the full discussion in 1 American Leading Cases, 17, on the decisions in Sexton vs. Wheaton and wife, 8 Wheaton, 229, 252, and Salmon vs. Bennett, 1 Connecticut, 525.

In the latter case it was held that such a conveyance was valid against a creditor whose claim existed when the conveyance was made.

The voluntary deed of William C. Riddle was

made in 1853. He had no dealings with B. J. Wilson as a creditor until the Fall of 1866.

See printed Record, p. 113.
Atherly on Marriage Settlements, p. 165, n. 1.
Hill on Trustees, p. 83–90, 106.
4 Kent's Com., *464, note.
Hinde's Lessee vs. Longworth, 11 Wheaton, 190.

The Supreme Court of Georgia, in Weed vs. Davis, 25 Ga., 684, decided that a person, though in debt, may in good faith make a voluntary conveyance of a part of his property, if the part which he retains is sufficient to pay his debts.

A voluntary conveyance made by a husband, solvent at the time, to his wife and children, is binding as against creditors.

Brown vs. Spivey, 53 Ga., 155 (2).

And this principle is incorporated in the Code of Georgia.

Code, sec. 1776.

There is no evidence that William C. Riddle had any creditors when he made the trust deed in 1853, and the presumption is that he was solvent.

His deed was in the nature of a declaration of trust. It plainly created a trust in favor of his wife and children, and he no longer held the beneficial interest in the property.

In Georgia no formal words are necessary to create a trust estate, and no words of separate use are necessary to create a trust estate for the wife.

Code of Ga., secs. 2305–2307.
Gordon vs. Green and wife, 10 Ga., 535 (6).

The law of Georgia provides that the husband may at any time during the coverture, either through trustees or directly to his wife, convey any property to which he has title, subject to the rights of prior purchasers or creditors without notice.

Code, sec. 1776.

Every voluntary conveyance made by the husband on the wife must be recorded in the office of the Clerk of the Superior Court of the County of the residence of the husband, within three months after the execution thereof. On failure to comply with this provision, such settlement shall not be of any force or effect against a purchaser or creditor, who *bona fide* and without notice, may become such before the actual recording of the same.

Act of 1847 in Code, sec. 1778.

Every voluntary deed or conveyance made by any person shall be void as against subsequent *bona fide* purchasers for value without notice of such voluntary conveyance.

Code, sec. 2632.

We submit that the law of Georgia upon this subject, so far as the rights of creditors are concerned, is perfectly plain and free from embarrassment.

What shall be the effect of recording, or failing to record, a voluntary settlement, is purely a matter of statutory regulation to be determined by each State for itself. The law of Georgia provides that such settlements shall be recorded within three months, and that upon failure so to record they shall have no force or effect against a creditor who, *bona fide* and without notice, may become such before the actual recording of the same.

Code, sec. 1778.

The proof is clear that this trust deed was duly executed on the 23d day of April, 1853, and was recorded in the Clerk's office, at Washington County, on the 26th day of May, 1853.

See printed Record, p. 69.

There is no statute or decision in Georgia modifying or withdrawing the legal effect of an original recordation in obedience to said statute. The law makers doubtless presumed that if a voluntary deed

to a large body of land in one of the Counties of the State was once placed upon record it would become a fact of such notoriety, in the country particularly, that any diligent creditor could discover it upon inquiry, even if the official records were subsequently lost or destroyed.

We therefore submit that if this deed was once recorded in time it would prevail against a *subsequent* creditor, even if he became such without notice.

This is confirmed by Code, sec. 1776, which saves only the rights of *prior* creditors without notice.

This particular question has been settled by the Supreme Court of Georgia in its interpretation of the statute; and such interpretation by the highest Court in a State is recognized by the Courts of the United States as controlling.

In Brown vs. Spivey, 53 Ga., 155, the Supreme Court of Georgia say: A *bona fide* creditor, to avail himself of the failure to record a voluntary settlement of the husband upon the wife, in the County of the residence of the husband, within three months after its execution, must have become such before the actual record of the same, on the faith of the property embraced in the settlement.

To the same effect is the later case of Gentry vs. Cowan, McClung & Co., 66 Ga.. 720.

And in Adair vs. Davis, 71 Ga., 769, said Court held that even if a voluntary settlement was not recorded within three months, it would take precedence of a deed for value made after its actual record, subsequent to the expiration of said three months, such record being in contemplation of law actual notice.

We therefore submit that the actual recordation of said settlement within three months gave it precedence over said B. J. Wilson, under the Statute of Georgia, as a subsequent creditor, whether he had notice of the deed or not.

We contend that he did have notice of it before he became a creditor, as clearly shown by the evidence, and as found both by the jury and the Court.

The rights of a purchaser, as against such voluntary settlement, are, perhaps, not so perfectly clear, but the question becomes somewhat immaterial in this case, because Wilson purchased under the enforcement of the lien he acquired as a creditor, and if he had notice, or was charged as a creditor, he could not become a *bona fide* purchaser without notice.

Sections 1776 and 1778 of the Code of Georgia place purchasers on the same footing exactly as creditors. The later section 2632 declares that every voluntary deed or conveyance made by any person shall be void as against subsequent *bona fide* purchasers for value without notice of such voluntary conveyance.

But this section can be readily reconciled with 1776 and 1778, when we remember, that under the law of Georgia, record is equivalent to evidence of actual notice to a subsequent purchaser. This has been expressly decided by the Supreme Court of Georgia.

See Landrum vs. Russell, 29 Ga., 405.

Adair vs. Davis, 71 Ga., 770, and cases cited by the Court.

The words "without notice of such voluntary conveyance," in section 2632, become equivalent to failure to record, as required by section 1778.

Cummings vs. Boston & Gunby, 25 Ga., 283 (1).

We submit, therefore, that this settlement having been in fact recorded within three months, it necessarily acquired precedence, under the statute, over any subsequent credit extended, or purchase made, by said appellant, without regard to any other notice of said trust received by him.

But we submit that the evidence clearly proves notice to him both as creditor and purchaser.

What is notice under the law of Georgia? We have shown that the actual placing upon record of such a deed is equivalent to evidence of actual notice.

In Chatham vs. Bradford, 50 Ga., 327, the Supreme Court held that while it was the duty of the Clerk to keep a proper index of his records, a deed or mortgage in fact recorded did not, under our statute, cease to be notice because not indexed.

But aside from the notice conveyed by recordation, our Supreme Court has clearly defined what is meant by notice.

In Jordan vs. Pollock, Administrator, 14 Ga., 145 (4), the Court say that actual notice is such as the party is presumed to have received personally, because the evidence within his knowledge was sufficient to put him upon inquiry, and on page 158 the Court say that actual notice is shown when the proof, positive or presumptive, authorizes the clear and satisfactory conclusion that the purchaser had knowledge of the incumbrance, or would have had it if he had not wilfully declined to search for it, and thus his conscience is affected by it.

In Cummings vs. Boston & Gunby, 25 Ga., 277, the Court expressly decided that constructive notice of an unrecorded marriage settlement is sufficient to bind a *bona fide* purchaser under the Act of 1847 requiring such settlements to be recorded. This some of the earlier cases had questioned. The Court, on page 284, conclude that any notice is sufficient, or, in other words, amounts to constructive notice, which would excite apprehension in ordinary minds and prompt inquiry into the actual condition of things. We may add that this conclusion of the Court has been followed in all the later cases. This is a question of fact to be properly ascertained by a jury, or

by a Judge, trying facts; and the Judge, at the hearing before the jury, instructed them in accordance with the above decision.

See printed Record, p. 33.

See First National Bank of Macon vs. Nelson & Co., 38 Ga., 402 (3d).

Phillips, Jr., vs. Adair, 59 Ga., 371.

In Bryant vs. Booze, 55 Ga., 438 (2), the Court say the notice need not be actual or amount to full knowledge. Information, from whatever source derived, which would excite apprehension in an ordinary mind and prompt a person of average prudence to make inquiry, will be sufficient.

See Gardner vs. Grannis, 57 Ga., 540 (10), to same effect; and Rome Gas Light Co. vs. Meyerhardt, 61 Ga., 287.

In Urquhart vs. Leverett, 69 Ga., 92 (5), the Court adopt the language and conclusion of the Court in Jordan vs. Pollock, and declare that notice is actual when the proof, positive or presumptive, authorizes a clear and satisfactory conclusion that the purchaser had knowledge of the encumbrance, or would have had it if he had wilfully declined to search for it.

In Smith vs. Phinizy, 71 Ga., 641, the Court hold that putting upon inquiry is notice; and in Hunt vs. Dunn, 74 Ga., 120, and Duncan vs. Johnston & Co., 74 Ga., 348, they hold that putting a party on enquiry is notice of what the inquiry would develop.

In Hunt vs. Dunn the Court say where a person has sufficient information to lead him to a fact he shall be deemed cognizant of such fact.

In Johnson vs. Dooly, 72 Ga., 297, the Court say actual notice may be proved by the facts of the case from which it may be inferred.

In Poulet and wife vs. Johnson, 25 Ga., 403 (3), the Court say notice to a purchaser that a particular person claims title to the thing about to be purchased is sufficient, notwithstanding that the notice may not give the nature of the claim.

This brings us to an examination of the evidence.

That a settlement in favor of his wife and children was made by William C. Riddle, on April 23d, 1853, of the fifteen hundred acres of land in litigation is expressly proved by himself. He swore that he made the deed.

Printed Record, p. 45.

Mrs. Seny Ann S. Riddle swore that she always knew there was a trust deed to said fifteen hundred acres of land ever since it was made. That said deed was lost, and after a long search, was found since the sale of the land.

Record, p. 73.

The land was sold under the mortgage *fi. fa.* Wilson went into possession January 1st, 1877.

Record, p. 67.

Ira Walden swore that he had been a Justice of the Peace from 1841 to 1860, and was when said deed was executed; that he witnessed the signature of William C. Riddle, who signed the deed, to the deed, signed his own name as a witness thereto as such Justice, and that Franklin Tanner signed said deed as a witness. He saw said deed again in February, 1880.

Record, pp. 66, 89, 90.

Elefair Walden swore that she saw said deed in February, 1880.

Record, p. 92.

M. H. Odom swore that he saw the deed in February, 1880, and that he recognized the signature of Ira Walden.

Record, p. 95.

Charles D. Thigpen swore that he saw the deed in December, 1878.

Record, p. 106.

A. Youngblood swore that he saw said deed in

March, 1881, and it looked then just as it looked at the time he testified.

Record, p. 94.

William E. Clark swore that he was a surveyor. That the identical trust deed was exhibited to him in October, 1880, to ascertain if he could survey the land by it. He did survey the land in 1882 with the deed before him, and came upon the clearly defined ancient corners and land-marks fully covering the number of acres called for in the deed.

Record, pp. 51, 52, 99.

A. D. Jernigan swore that he was Deputy Clerk of the Superior Court, of Washington County, from 1848 to 1860, under his father, Louis A. Jernigan, who was Clerk. His father died in May, 1861. He swore that the certificate of registry and the signature of certificate, dated May 26th, 1853, were in his father's hand-writing, who was then Clerk of the Court.

Record, p. 88.

The deed itself, which was in evidence, was endorsed:

"Registered in the Clerk's office, of Washington County, in Book Z, p. 404, this 26th May, 1853.

(Signed) "L. A. JERNIGAN, Clerk."

E. S. Langmede, sixty-five years of age, a lawyer of Washington County, swore explicitly that in 1852 the Brantley mill tract of land contained from twelve hundred to fourteen hundred acres; that he purchased from William C. Riddle about one-half said tract; that in the Fall of 1853 he applied to said Riddle to sell him the other half, and was informed by Riddle that he had made a trust deed of said other half to his wife and children, and could not sell it. Soon thereafter he examined the Record of Deeds, and found said deed on record in the Clerk's office. He read it on the Record in order to ascer-

tain whether a decree could be had in Chancery authorizing the trustee to sell the land.

Record, p. 67.

He also identified the signature of Franklin Tanner, the witness to said deed.

Record, p. 67.

To this explicit and overwhelming testimony there is nothing opposed except the testimony of Sylvanus Truluck, and of several witnesses examined as experts.

Truluck swore that he wrote that deed, probably, he thought, in the Spring of 1881.

Record, pp. 138 and 139.

That W. G. Bryan, since dead, brought him a copy of a deed similar to the one in dispute, but without any signatures, and told him he wanted witness to make the hand-writing of the copy he was to prepare as nearly like the hand-writing of the copy brought to witness as possible. That Bryan gave him a piece of old blue paper on which to write it, some pens and a bottle of pale ink; that the sheet was not torn or separated at the places of folding, as it was when he testified; that the signatures of William C. Riddle and the witnesses had been put there since he wrote it and turned it over to Bryan. He did suspicion something wrong when he copied the deed, but consented to write it because he did not think it would injure him.

Record, pp. 138, 139.

The testimony of this witness is, to say the least, very extraordinary. The significance of making an exact copy of a copy already made and unsigned, no evidence being offered as to the identity of the handwriting of either the copy or of the deed now in dispute, does not appear. The same party who made the copy handed to witness could have made the second copy on the old blue paper without implicating witness in the transaction.

If the names of the witnesses were not signed to this paper until after Truluck copied it, how did the name of Franklin Tanner, the witness, get upon it. Both Ira Walden and E. S. Langmede identified the signature of Franklin Tanner as genuine.

Record, pp. 66, 67.

The conclusion is inevitable, either that Sylvanus Truluck made a clear mistake in undertaking to identify the deed produced as the paper copied by him or swore falsely; or that William C. Riddle, and his wife, Seny Ann S. Riddle; Ira Walden, the Justice of the Peace, and his wife, Elefair Walden; William E. Clark, the surveyor; Augustus D. Jernigan, the Deputy Clerk; A. Youngblood, M. H. Odom and Charles D. Thigpen, perjured themselves.

In addition to this, the deed itself, which was before the jury and Chancellor, presented strong intrinsic proof of authenticity. The Chancellor regarded the fact that no ink blots appeared in the seams or foldings of the old blue paper, across which Truluck's copy, if made, was written, as a strong circumstance. Demonstration will prove that it is impossible to write across the folds of old paper without leaving ink blots. We submit, therefore, that jury and Court were properly controlled by the great preponderance of testimony on this point, and that the evidence given by Truluck should be ignored.

The only other evidence offered againt the genuineness of the deed was some expert testimony.

B. F. Moore, an accountant and teacher of bookkeeping, was shown two signatures of William C. Riddle and the signature to the deed, and expressed the opinion that the person who signed the two papers did not sign the deed.

Record, p. 145.

Witness also gave his opinion, having testified that he had no experience as to the age of ink (Record,

p. 144,)—that the writing in the body of the deed was a year or two older than the certificate of registry endorsed thereon by A. M. Mayo, Clerk.
Record, p. 145.

Mayo's certificate was dated October 5th, 1881.
Record, p. 69.

If the deed was a year or two older than this, as he testifies, it was not the paper prepared by Truluck, who swears that he made the copy in the Spring of 1881.
Record, p, 139.

Witness testifies that the endorsement on the back of the deed by Jernigan, the Clerk, shows age, while the body of the deed does not.
Record, p. 145.

The evidence shows that the endorsement of Jernigan, Clerk, was made May 26th, 1853.
Record, p. 69.

If this endorsement was already on the paper when Truluck made the copy he would have seen and testified to it. He makes no reference to any such writing on said paper.
Mr. Moore on cross-examination would not swear that the two signatures of William C. Riddle shown him and the signature to the deed were not all three made by the same person. He would only express an opinion.
Record, p. 148.

Witness was shown other signatures of Ira Walden, and gave as his opinion that said signatures and the signature to the deed, as a witness, were all written by the same person.
Record, p. 148.

Ira Walden swore positively that he placed his signature on said deed in April, 1853.
Record, p. 89.

J. W. Goldsmith, bank cashier and teller, gave his opinion that the signatures of William C. Riddle on the exhibits and on the deed were not written by the same person.

Record, p. 149.

But the witness, on cross-examination, stated that he did not mean to say that a difference of twenty years between the signature on the deed and on the exhibits—(which difference in time was proved and conceded, see Record, p. 154,)—would not have an effect. He further stated that he was not acquainted with the signature of William C. Riddle; that he examined the signatures at the instance of B. J. Wilson, and made up his mind before he gave his testimony, and he was not willing to swear that the person who signed the exhibits did not sign the deed.

Record, p. 150.

E. S. McCandless, bank cashier, called as an expert by appellant, declined to give an opinion as to the three signatures of William C. Riddle, and admitted that any dissimilarity in the signatures might be accounted for by a difference of twenty years between them.

Record, p. 151.

W. D. Luckie, bank officer, testified to a dissimilarity in the signatures, but that he could not say that the three papers were not signed by the same person, and he refused to swear that they were not.

Record, pp. 152–153.

H. M. Coker, Jr., bank officer, did not believe the same man signed the three papers, unless it could be proved to him that through some disease or accident the nerves of the man were greatly impaired. Witness would not swear that the same man who signed exhibits A. and B. did not sign the deed.

Record, p. 154.

B. J. Wilson testified that he knew the handwriting of William C. Riddle, and expressed the opinion that if he signed said deed he must have been laboring under great nervous disability. He admitted on cross-examination that he did say to counsel for plaintiffs that he believed William C. Riddle did sign the deed, until he heard the experts testimony on the subject.

Record, p. 155.

To the contrary of this testimony by opinion, William C. Riddle swore positively that he did sign said deed in April, 1853, and Ira Walden swore positively that he saw him sign it then, and, as a Justice of the Peace, witnessed his signature at that time.

It is the proper province of a jury to determine the weight of expert testimony.

Spring Company vs. Edgar, 99 U. S. 646 (2).

We submit that the positive and explicit testimony of witnesses to the actual signing of a name should outweigh many opinions as to the genuineness of such signature.

This brings us to the proof of notice of the trust deed prior to the execution of the mortgage and the sale.

B. J. Wilson testified that his firm began dealing with William C. Riddle in the Fall of 1866; that he first gave a mortgage on eight thousand acres of land, and on May 5th, 1870, gave a new mortgage on ten thousand acres.

Record, p. 114.

The first mortgage was canceled in 1868.

Record, p. 45.

Mr. Riddle was asked whether at the time of the execution of these mortgages, or before, he gave B. J. Wilson any notice of any trust estates in these mortgaged lands.

Record, p. 101.

He replied explicitly as follows: "I did. In Savannah, in Mr. Wilson's office, when I gave a mortgage for eight thousand acres in 1867, I told B. J. Wilson there was a trust deed made by my father to Mrs. Riddle and children to three thousand acres of land. * * * He said that the mortgage was simply an accommodation paper—that it made no difference. This conversation took place in Savannah in his office at the time I was arranging to give him a mortgage for eight thousand acres in 1867. I took the mortgage up in 1868. Some time during the year 1869 he was at my house; we went to 12½ Central Railroad, where W. J. Henderson then lived, and at Brantley mill seat. He spoke of the water power there, and asked me if he could buy it; that it would be a good place to build a factory. Then it was I told him it was not for sale; I could not sell if I wanted to as it belonged to Mrs. Riddle and her children. He wanted to know of me how much land I had, and I told him that I was in possession of about ten thousand acres; that I had no right to sell but about fifty-five hundred acres, as I had made a deed to Mrs. Riddle and children to fifteen hundred acres of it, besides three thousand acres that my father gave them. I showed him where they lay, and pointed out the Brantley mill place and Brown place."

Record, pp. 101–102.

And in reply to a cross question he said: "I gave Mr. Wilson notice first in Savannah in 1867, and the next time at the Brantley mill site in the Spring of 1869.

Record, p. 103.

It will be remembered that E. S. Langmede testified that William C. Riddle made a similar statement as to his inability to sell this land to him.

Record, p. 67.

B. J. Wilson, on the other side, testified that William C. Riddle did not tell him at any time that there was a trust deed or any claim of trust upon any of those lands. * * * The first he ever heard of any trust deed was through R. L. Warthen, his attorney, to foreclose the mortgage. This was at the Spring term, 1876, of the Superior Court of Washington County, and was in reference to the three thousand acres.

Record, p. 114.

Now if this testimony stood by itself certain facts are to be considered.

Mr. Riddle was testifying against his personal pecuniary interest, as the trust deed deprived him of all beneficial interest in the property. Mr. Wilson was testifying in favor of his personal pecuniary interest.

In Laramore vs. Minish, 43 Ga., 287, the Supreme Court of Georgia ruled that where interested parties are allowed to testify the jury may exercise their judgment on the credit of such witnesses from the *fact of their interest*, irrespective of other impeachment or attack.

The jury and the Chancellor hearing the facts had to decide between these two witnesses on this conflicting testimony. They made their decision, and we submit that a reviewing Court should hesitate to set aside their finding.

In a similar case the Supreme Court of Georgia refuses to interfere.

See Penny vs. Vincent, 49 Ga., 475, 476.

But there are other tests to be applied to the testimony of B. J. Wilson. When asked later on about

the conversation with Mr. Riddle about the deed of trust he said that he did not have the slightest recollection of such a conversation; that he was always under the impression that the land was Riddle's, as he was in possession. He admitted that Riddle had talked with him about his lands.

Record, pp. 133, 134, 135.

When asked if he would swear that he never had such a conversation with Mr. Riddle he replied: "No; I have no recollection of it."

Record, p. 135.

Green Riddle testified that in Sandersville Messrs. Happ, Newsome and B. J. Wilson were talking about the Riddle lands, and he heard Wilson tell these gentlemen that he, Wilson, heard of some trust deed, but he thought they were lost or destroyed and would never come up again.

Record, p. 77.

Aiden Vining testified that he had a conversation with B. J. Wilson about the mortgage made to him by Riddle, and that Wilson said to witness that William C. Riddle had told him, Wilson, that there was a trust deed, but he, Wilson, thought there was no trouble about it. He understood Mr. Wilson to say that Mr. Riddle had told him of the existence of the trust deed at the time Mr. Riddle made the mortgage.

Record, pp. 81–82.

This is in flat contradiction of the testimony given by Wilson.

J. T. Youngblood testified that in a conversation with B. J. Wilson witness said to him there was a rumor out about the existence of certain *trust deeds* in favor of Mrs. Riddle, and he replied that he had heard such a rumor.

Record, p. 86.

Simon S. Thomas testified that he had a conversation with B. J. Wilson in relation to a claim Mrs.

Riddle had against Wilson pending in Washington Court, and that Wilson remarked during that conversation that Riddle had told him that there was an old deed, but that it would never be brought up.

Record, p. 57.

This is also in flat contradiction of Wilson's testimony.

Wilson swore that William C. Riddle had never at any time made any mention to him of any trust deed. Two witnesses positively swear that Wilson stated to them that Mr. Riddle had told him about such trust deed.

Under this evidence could jury and Chancellor decide that Wilson had had no notice of any trust deed.

That Wilson had notice of the trust deed for fifteen hundred acres before the sale and before he purchased the property at the sale, cannot be questioned.

Reuben Mayo, sheriff of Washington County when the land was sold in 1876, testified that before the sale a verbal notice was given by William C. Riddle, the substance of which was that whoever bought the land suit would not stop there.

Record, p. 96.

John N. Gilmore, attorney-at-law, testified that at said sale, as the friend and attorney of Mrs. Riddle, he gave notice before the sale and after the notice of Judge McKay, Wilson's attorney, that three thousand acres would not be sold, a claim having been made by the trustee of Mrs. Riddle, but that the remaining seven thousand acres would be sold; that all parties would take notice that this was a trust estate, and the purchaser would take notice that claims would be asserted to this trust property afterwards.

Record, p. 100.

This is fully confirmed by the testimony of Doctor D. L. Cheatham.

Record, p. 93.

This notice was specific and free from all ambiguity. It could only refer to the trust covering the fifteen hundred acres, as the evidence clearly shows that the three thousand acres covered by the other trust had been claimed and withdrawn from the sale.

In view, therefore, of the evidence set forth in the Record, and of the law applicable thereto, we submit that the decree of the Circuit Court, in favor of the appellees, should be confirmed.

Respectfully submitted,

GEORGE A. MERCER,
Of Counsel for the Appellees.